150 U.S. 156

RECORD, CASE No. 13,938.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~207~~. 63

NATHAN C. MORSE, JUNIOR, AND CHARLES EVANS, PLAINTIFFS IN ERROR,

vs.

JOHN JAY ANDERSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED JANUARY 2, 1890.

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a UNITED STATES OF AMERICA, *District of Kentucky*, } *ss*:

To John Jay Anderson, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington on the first day of its next October term, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the said district of Kentucky, wherein Nathan C. Morse, Jr., and Charles Evans are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 29th day of November, in the year of our Lord 1889, and of our Independence the 114th year.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

JNO. W. BARR, *Judge*.

b Executed this citation December 12th, 1889, on John Jay Anderson by delivering a copy hereof to James O'Hara, Jr., his attorney of record, at Covington, Ky.

D. J. BURCHETT, *U. S. M.*,
By CHAS. Y. GRAY, *D. M.*

Marshal's fees: To executing citation, $2.00.

c UNITED STATES OF AMERICA, *District of Kentucky*, } *ss*:

The President of the United States of America to the judge of the circuit court of the United States for the district of Kentucky, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in said circuit court, before you, between Nathan C. Morse, Jr., and Charles Evans, plaintiffs, and John Jay Anderson *et al.*, defendants, a manifest error hath happened, to the great damage of said Nathan C. Morse, Jr., & Charles Evans, as by their said complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first day of our next October term, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme

Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Covington, in said district, this 29th day of November, A. D. 1889, and of the Independence of the United States the 114th year.

JOS. C. FINNELL.
C. C. C., K. D.

Allowed by—
JNO. W. BARR, *Judge.*

d Executed December 12th, 1889, on Jos. C. Finnell, clerk United States circuit court, at Covington, by delivering to him a copy hereof.

D. J. BURCHETT, *U. S. M.*,
By CHAS. Y. GRAY, *D. M.*

Marshal's fees, $2.00.

e Supreme Court of the United States.

CHARLES EVANS and NATHAN C. MORSE, Plaintiffs,
against
JOHN JAY ANDERSON, HENRY ESTES, & GREEN ESTES, Defendants.
} In Error.

Assignment of Errors.

The plaintiffs in error, Charles Evans and Nathan C. Morse, say that in the record and proceedings and judgment herein errors to their prejudice have occurred as follows:

1st. The court erred in sustaining the motion of defendants to exclude the certified copy of the deed from Daniel Breck to N. C. Morse, marked "A," dated July 17th, 1838, and in deciding as a matter of fact that none of the land in contest (the John Carnan 10,000-acre tract) lay in Estill county in the year 1838.

2nd. The court erred in excluding the evidence as to the contents of the will of C. W. Clayton.

3rd. The court erred in charging the jury as follows (here copy charge to jury).

4th. The court erred in instructing the jury that under the evidence in this case it was necessary for the plaintiffs to show title from the Commonwealth in order to recover.

5th. The court erred in failing to instruct the jury that the defendants were estopped to deny Duckham's title to the land in controversy previously to his sale to Breck in 1838.

6th. The court erred in failing to instruct the jury that it was not necessary for plaintiffs to show title in Thomas Duckham to the land in controversy, plaintiff and defendant both claiming under Thomas Duckham.

7th. The court erred in failing to instruct the jury as to
f what constituted contin-ous, adverse, and peaceable possession under the law of Kentucky.

8th. The court erred in failing to instruct the jury that if they found from the evidence that plaintiffs and defendants both claimed under a common source that it was not in that event necessary for plaintiffs to trace their title back of that source.

CHARLES EVANS AND NATHAN MORSE,
Plaintiffs in Error.

1 Proceedings of the circuit court of the United States for the sixth circuit and district of Kentucky, at Covington, begun and held at the Federal court hall, in said city of Covington, this 5th day of December, A. D. 1887, and of our Independence the 112th year, being the regular December term of said court.

Court met.

Present: Hon. John W. Barr, sitting as circuit judge.

NATHAN C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

Be it remembered that heretofore, to wit, on the 19th day of September, A. D. 1885, came the plaintiffs and filed in the clerk's office of this court their petition herein.

Said petition is in words and figures as follows, viz:

Circuit Court of the United States, District of Kentucky.

NATHAN C. MORSE, JR., and CHAS. EVANS, Plaintiffs,
vs.
JOHN JAY ANDERSON, HENRY ESTES, GREEN ESTES, Orlando D. Forkner, Darius Congleton, Stephen De Hart or Be Hart, Dockey De Hart or Be Hart, Wesley Spencer, and Central Kentucky Lumber, Mining,
2 Manufacturing and Transportation Company, Alexander Spencer and Burt Spencer, Defendants. } Petition.

Plaintiffs state that Nathan C. Morse, Jr., one of the plaintiffs, is a citizen of the State of Iowa and Charles Evans, the other plaintiff, is a citizen of the State of Ohio; that defendants John Jay Anderson, Henry Estes, Green Estes, Orlando D. Forkner, Darius Congleton, Stephen De Hart, Dockey De Hart, Wesley Spencer, Alexander Spencer, and Burt Spencer are citizens of the State of Kentucky, and that the Central Kentucky Lumber, Mining, Manufacturing and Transportation Company is a corporation chartered by the laws of Kentucky, having its principal place of business at Paris, Kentucky, and that Wm. Tarr is the president and chief officer thereof; that the matter in controversy in this cause involves more than five hundred dollars, exclusive of costs.

Plaintiffs state that they are the owners and entitled to the pos-

session of the following tract or parcel of land, situate partly in the county of Powell, partly in the county of Wolfe, and partly in the county of Menifee, and in this United States judicial district and in the State of Kentucky—

Bounded and described as follows, to wit: Beginning at the northwest corner of a tract of land patented to John Carnan, containing 10,000 acres, lying in said counties, running thence with the north line of said tract until it strikes the line of the Powell Rice tract and binding on the same; thence on a line made by John Jay Anderson and others in 1873 around what is known as the "Hunters" or "Hunters' Camp" tract and following the same until it strikes the upper or southern line of a survey made by G. B. Cockerell for J. J. Anderson and Co., O. D. Forkner, Darius Congleton, and others, recorded in Deed Book 23, page 256,
3 land records of Montgomery Co., Kentucky, and following said upper or southern line of said survey till it strikes the west line of the said John Carnan 10,000-acre survey; thence N. 9 degrees W. with said west line of said John Carnan 10,000-acre survey to the place of beginning, containing about 6,000 or 7,000 acres, more or less. Reference is hereby made to the plat of said lands filed in the case of N. C. Morse *et al. vs.* Chas. Evans *et al.*, now on file in said cause in the clerk's office of this court.

Said land was conveyed to Daniel Breck by deed dated July 17, 1838, by Thomas Duckham, and by said Daniel Breck to N. C. Morse, Sr., by deed dated September 13th, 1865. Said N. C. Morse, Sr., departed this life intestate on the — day of ——, 1877, and was at the time of his death a resident of Kenton county, Kentucky, and after his death Mary Z. Morse, having been first duly appointed administratrix of the estate of said N. C. Morse, Sr., deceased, filed a a petition in the chancery court of Kenton county, Kentucky, to wind up and settle his estate and to sell said lands, and at the October term of said court, 1879, a judgment was rendered directing the sale of said lands, and on the 19th day of February, 1880, said land was sold by the commissioner of said court, and Charles Evans became the purchaser thereof, and at the same term, to wit, the February term, 1880, of said court, the said sale was duly confirmed, and on the 10th day of March, 1880, said commissioner made and executed to said Chas. Evans his deed to said land. All the above-named deeds or duly certified copies thereof are filed herewith and are hereby referred to and made part of this petition, and a copy of said order of sale will be produced when required.

Plaintiffs further state that all the heirs and distributees of said N. C. Morse, Sr., were made parties to said suit except plain-
4 tiff N. C. Morse, who is a son and heir-at-law of N. C. Morse, Sr., deceased. He was not served with process, no warning order was taken out against him, his appearance was not entered in said suit of N. C. Morse's administratrix and his heirs and creditors in said proceeding to wind up and settle his estate and sell said land in said Kenton county chancery court, and his right and interest in and to said land has never in any way been divested.

Plaintiffs further say that all of said defendants claim under pre-

tended conveyances from said Duckham of later date than the conveyance from said Duckham to Breck in 1838 aforesaid.

Plaintiffs say that said pretended conveyances from Duckham to defendants and their vendees are void and of no effect.

Plaintiffs further say that the defendants hold possession of said land, and during the last — years have unlawfully kept the plaintiffs out of possession, whereby they have sustained damage to the amount of five thousand dollars.

Wherefore they pray for the recovery of said land and damages and other proper relief.

IRVING HALSEY,
Plaintiffs' Attorney.

Irving Halsey, attorney for plaintiffs in this cause, says he believes the allegations in the above petition to be true, and that neither of plaintiffs is now within this county, State, or judicial district.

IRVING HALSEY.

Subscribed and sworn to before me by Irving Halsey this 19th day of September, 1885.

JOS. C. FINNELL, *Clerk.*

And on November 10th, 1885, a summons was issued herein as follows, viz:

5 The President of the United States of America to the marshal of the Kentucky district, Greeting:

You are commanded to summon John Jay Anderson, Henry Estes, Green Estes, Orlando D. Forkner, Darius Congleton, Stephen De Hart (or Be Hart), Dockey De Hart (or Be Hart), Wesley Spencer, Alexander Spencer, Burt Spencer, and Central Kentucky Lumber, Mining, Manufacturing and Transportation Company to answer on the first day of the next December term of the circuit court of the United States for the district of Kentucky, to be held at the city of Covington, a petition filed against them in said court by Nathan C. Morse, Jr., and Charles Evans, and warn them that upon their failure to answer the petition will be taken for confessed or they will be proceeded against for contempt; and you will make due return of this summons on the first day of the next December term of said court.

Witness Morrison R. Waite, Esq., Chief Justice of the Supreme Court of the United States, at Covington, in said district, [SEAL.] this 10th day of November, in the year of our Lord 1885, and of our Independence the 110th year.

JOSEPH C. FINNELL,
C. C. C., K. D.

Which summons was returned and filed December 2nd, 1885, endorsed as follows, viz: "Executed the within summons Nov. 13th, 1885, on John J. Anderson, in Montgomery Co., Ky., and Nov. 14, 1885, on Henry Estes, Green Estes, Wesley Spencer, Darius Congle-

ton, Stephen De Hart, Dockey De Hart, and Alexander Spencer, in Powell Co., Ky., by delivering to each of them a true copy of the within summons, and on Nov. 16, 1885, *on* the Central Ky. Lumber, Mining, Manufacturing and Transportation Co. by de-
6 livering a copy of within summons to Wm. Tarr, the president of said Co., at Paris, Ky. Orlando D. Forkner and Burt Spencer not found.

A. J. GROSS, *U. S. M.*,
By S. F. ADAMS, *D. M.*

And on a day following, to wit, on the 7th day of December, A. D. 1885, the following answer was filed herein, viz:

Circuit Court of the United States, District of Kentucky.

NATHAN C. MORSE, JR., and CHARLES EVANS, Plaintiffs,
against
JOHN JAY ANDERSON *et al.*, Defendants.

Separate Answer of John Jay Anderson.

The defendant John Jay Anderson, for separate answer and defense to plaintiffs' petition, now and at all time- hereafter saving and reserving unto himself all benefit and advantage of exceptions or demurrers which can or may be had or taken to the many errors, *in*certainties, and other imperfections in the said petition contained, for answer thereto or to so much or such parts thereof as he is advised it is material for him to make answer unto, says:

It is not true and he denies that Nathan C. Morse, Sr., the father of the plaintiff Nathan C. Morse, Jr., was at his death or at any time or that the plaintiff Nathan C. Morse, Jr., or the plaintiff Charles Evans *are* now or *were* at the institution of this action the owners of or had any interest in either of the tracts or boundaries of land hereinafter described and claimed by this defendant and others who hold jointly with him, to wit, John T. Magowan, Nathaniel Williams, and John S. Wyatt.

7 He denies that the deed from Thomas Duckham to Daniel Breck passed any right or title to any land claimed by this defendant, and he denies that the deed from Daniel Breck to Nathan C. Morse, Sr., and others passed any right or title to said Morse in or to any land claimed by this defendant.

And he says that the said Breck nor Nathan C. Morse, Sr., or the plaintiffs never were at any time seized or possessed of any part of the land claimed by this defendant, and that they nor any of them ever asserted any claim or interest in or to any part of said land, until recently the plaintiffs have been setting up some kind of claim to same.

He denies that any right, title, or interest ever passed from said Nathan C. Morse, Sr., to the plaintiff Nathan C. Morse, Jr., by descent or otherwise, or that any right, title, or interest passed by the

pretended proceedings in the Kenton chancery court to the plaintiff Charles Evans, and denies that the commissioner's deed from said court passed any right, title, or interest to said Evans. He sayd that he and those who hold with him were nit parties to said suit and had no knowledge of it in any way and are not bound by said proceedings. He says that the deed from Duckham to Breck was never recorded in Montgomery county, where the said land was then situated, nor in Powell or Menifee counties, where said land is now situated; that no part of said land ever was in Estill county, nor was said deed recorded in any county in which said land or any part of it was or is now situated; that said deed was never recorded in any county in which any part of the land claimed by the plaintiffs is situated, and that he and those who hold with him nor those under whom they hold never had any knowledge or notice of said deed until within the last four years and many years after
8 they had bought and paid for the land in good faith.

He says that the deed from Daniel Breck to Nathan C. Morse, Sr., and others was never recorded in any county in which the land claimed by the plaintiffs or the land claimed by these defendants or any part of either is situated.

And that he and those holding with him had no notice or knowledge of the said deeds until recently and long after they had bought and paid for said land and received a deed for same and was in the actual possession of same.

He denies that he and others or any one made a line around the land claimed by this defendant and others in 1873.

He says that the lines were made and marked in 1841 or 1842 by James P. Magowan, who then owned said land.

It is true that he and others had the old line run and remarked in 1873. He says that the boundary claimed by him and others with him is a part of a large boundary of land they own, and about twenty-eight hundred acres of it is covered by the claim of the plaintiffs in this action, and is of the value of about six thousand ($6,000.00) dollars and certainly more than five thousand ($5,000.00) dollars.

He says he knows nothing about the suit referred to in plaintiffs' petition, of Mary Z. Morse, administratrix of N. C. Morse, Sr., against N. C. Morse's heirs and creditors, and calls on plaintiff- to file a copy of same. He also calls on plaintiff- to file the exhibits or copies thereof referred to by them in their petition.

He denies that the plaintiff N. C. Morse, Jr., was not a party to the suit of Mary Z. Morse, administratrix, against N. C Morse's heirs and creditors, in the Kenton chancery court.

And, for further answer and defense, he says that there is
9 a misjoinder of defendants to this action; that the boundary of land claimed by him is wholly separate and apart from any land claimed or held by his codefendants; that he has no connection with their claims or holdings, and they have none with his, and he denies the right of the plaintiff- to prosecute this action against this defendant jointly with his codefendants.

This defendant, further answering, says that he and those holding

with him as aforesaid are the joint owners and in the actual possession of the two following tracts or boundaries of land, formerly situated in Montgomery county, now in Powell and Menifee counties, on Red river. The first tract is bounded as follows, to wit: Beginning at a lynn tree on the south side of Red river, formerly a corner of Jonas Forkner, thence S. 51 W. 69.4 poles to a pine on a point; thence S. 25 E. 16.9 poles, S. 22½ E. 41.4 poles to a pine on the top of a dividing ridge between Auxier and Fish Trap branches; thence with the divide S. 2 W. 16 poles, S. 27½ W. 18 poles, S. 9½ E 16 poles, S. 5½ E. 26.7 poles to a pine on Carnan's old line (here defendants' deed and boundary enters inside of the John Carnan 10,000-acre patent); thence S. 34½ E. 20 poles to a pine; thence S. 5½ E. 19 poles to a pine tree; thence S. 8 E. 65 poles to a chestnut-oak tree; thence S. 25½ W. 9.4 poles to a pine, S. 45½ W. 24 poles, S. 18 W. 27 poles, S. 23 poles, S. 50 W. 7 poles, S. 43 poles, S. 60 W. 22 poles, N. 89½ W. 38 poles, S. 4 W. 55.4 poles, S. 24½ W. 27.4 poles, S. 11½ W. 25 poles to a chestnut oak corner marked "A. H. W.," corner of O. D. Forkner; thence with the main divide between the waters of North and Middle fork of Red river, the established line of Anderson and Company and said Forkner; thence S. 17½ E. 32 poles to a pine; thence S. 40¼ W. 18 poles to a chestnut oak; thence S. 16½ E. 28 poles to a pine, S. 89
10 E. 20.7 poles to a pine, S. 11 E. 22.7 poles to a pine, S. 18 W. 29.4 poles to a chestnut tree, S. 32½ W. 24 poles to a pine, S. 13½ W. 18 poles to a pine, S. 6 E. 20 poles to a pine, S. 26½ W. 16 poles to a pine, S. 72 W. 14 poles, S. 11½ W. 18.7 poles, S. 30 W. 16 poles, S. 30 E. 38.7 poles, S. 33 E. 20 poles, S. 79 E. 18 poles, S. 66 E. 32 poles, S. 20 E. 9 poles, S. 43 E. 7 poles, S. 85 E. 12 poles to a chestnut oak, N. 12½ E. 35 poles, N. 64½ E. 16 poles, S. 55 E. 22.7 poles, S. 18 E. 17.5 poles, S. 81½ E. 19.5 poles, E. 13.2 poles, S. 66 E. 15.9 poles to a white-pine tree, S. 27 E. 10 poles, N. 83 E. 26.7 poles, N. 60½ E. 24 poles, N. 41 E. 19 poles, N. 76½ E. 30.8 poles, S. 1 W. 33.2 poles to a pine tree, S. 57¼ E. 10.6 poles, S. 87 E. 40.9 poles, N. 74 E. 17.5 poles, N. 56¾ E. 18 poles, N. 86½ E. 22.7 poles, S. 61 E. 18.7 poles, S. 85 E. 16 poles to three pines, corner with Forkner and J. M. Thomas, and thence, leaving said Forkner's line and continuing with the dividing ridge, N. 80½ E. 18.9 poles, N. 41¾ E. 16.5 poles, N. 7 W. 22 poles, N. 76½ E. 10 poles, N. 75 E. 21.8 poles, N. 74¾ E. 33.9 poles, S. 75 E. 17.8 poles, S. 61 E. 15 poles, N. 88 E. 20 poles, N. 80 E. 9.4 poles, N. 53 E. 22 poles, N. 78 E. 14 poles, N. 26 E. 18 poles, N. 88 E. 21.1 poles to a pine, N. 37½ E. 15.2 poles, N. 55¾ E. 22.2 poles, N. 43 E. 21.6 poles, N. 65½ E. 17.7 poles, N. 43 E. 8.5 poles to pine, S. 51 E. 21 poles, S. 31 E. 13.2 poles to a pine, N. 81¼ E. 39 poles to a chestnut-oak tree, N. 24 E. 18 poles to a pine, N. 5 W. 19 poles to a pine, N. 43 E. 15 poles to a pine, N. 83 E. 38 poles to a white-pine tree; thence N. 58¼ E. 16 poles to a chestnut-oak tree; thence, leaving the main divide, N. 12 W. 21 poles to a chestnut-oak tree on the divide between the Rush Branch and Chimney Top water; thence with said divide N. 28½ W. 10 poles to a pine; thence N. 10 E. 25 poles to a pine, N. 20½ W. 26.5 poles to a stake,

N. 75 E. 33.5 poles to a pine, N. 18 E. 12 poles to a pine, N. 61
11 E. 60 poles to a pine, N. 73¼ E. 20 poles to a pine, N. 13½ W. 17.5 poles to a pine, N. 29½ W. 10 poles to a pine, N. 23½ W. 28 poles to a stake above a crevice in the cliff known as "Pinch 'Em Tight"; thence down the crevice N. 20 E. 8 poles to a marked corner on a stone at the mouth of the crevice; thence W. 38 poles to Rush branch; thence down the branch N. 10 W. 20 poles to a spruce pine, N. 33 W. 11 poles, N. 24 W. 10 poles, N. 5½ W. 22 poles, N. 6 W. 37.5 poles, N. 27 W. 47 poles, N. 35 W. 25 poles, N. 18 W. 21.5 poles, crossing the north fork of Red river; thence N. 53 E. 49 poles, N. 27 E. 20.3 poles, thence N. 79 E. 19 poles, N. 31 E. 14.7 poles, N. 30 W. 20 poles, N. 33 E. 16 poles, N. 12 E. 4 poles, S. 80 W. 11.4 poles, N. 52 W. 8.8 poles, N. 65 W. 10 poles, N. 10 W. 22.2 poles to a pine under the cliff; thence, continuing under the cliff N. 38 E. 23.4 poles, N. 63 W. 12.4 poles, N. 51 W. 6.7 poles, N. 10 E. 12.7 poles, N. 45 E. 38.8 poles, crossing Carnan's north 81 east line at two poles from the beginning of the last call, and a line drawn from this point S. 81 W. as of the date of the patent of John Carnan will go to the pine called for in defendants' boundary herein on Carnan's line, and this boundary aforesaid from said pine, around with the calls given above, includes the land claimed by this defendant and others who claim with him under the deed from John T. Magowan and others to this defendant and others.

Also the boundary and land embraced in the deed from O. D. Forkner to this defendant and others, and contains twenty-eight hundred and twenty acres by survey. The following are the calls of the balance of the defendant's boundary outside of the John Carnan 10,000-acre patent, but inside of the deed from Thom. Duckham to James P. Magowan and inside of the deed from John T. Magowan and others to this defendant and others, viz., from the crossing of the Carnan line at the point above designated on the line
12 N. 45 E. 33.8 poles, from said line it is 31.8 poles; thence N. 33 E. 20 poles, N. 51 E. 21.4 poles, N. 38 W. 25 poles, N. 5 E. 16 poles, N. 42 W. 22 poles, N. 22 E. 26 poles, N. 85 E. 38.7 poles, N. 65 W. 14 poles, N. 86 W. 23 poles, N. 12 W. 18 poles; N. 26 W. 19 poles, N. 49 E. 12.2 poles, S. 80 E. 19.8 poles, N. 71 E. 88 poles, N. 69 W. 23 poles, N. 37 W. 24 poles, N. 22½ W. 20 poles, N. 58½ E. 14 poles, N. 51 W. 26 poles, N. 29 W. 18.7 poles, N. 53½ W. 13 poles, N. 81½ W. 30 poles, N. 29 W. 18.7 poles, N. 16½ W. 19.4 poles, N. 14 E. 15 poles, S. 68½ E. 32 poles, N. 33½ W. 26 poles, N. 30 W. 24 poles, N. 35 W. 25.4 poles, N. 83 E. 21 poles, S. 63 E. 25.4 poles, S. 47½ E. 37.4 poles, S. 51 E. 23 poles, S. 67 E. 21.4 poles, S. 53 E. 16.8 poles, S. 82½ E. 21 poles, N. 24 E. 10 poles, N. 39 W. 17 poles, N. 3 E. 18 poles, S. 67¼ W. 7.4 poles, S. 81 W. 17 poles, N. 51½ W. 27 poles, N. 53 W. 23 poles, N. 54 W. 35.4 poles, N. 35 W. 23.7 poles, N. 59 E. 12 poles, S. 63 E. 20 poles, N. 88 E. 45 poles, N. 19½ W. 25.4 poles, N. 35½ W. 22.3 poles, N. 85 W. 18 poles, N. 66 W. 20 poles, N. 79 W. 18 poles, N. 65 W. 24 poles; N. 42½ E. 12 poles, N. 48 E. 11.3 poles, S. 83 E. 26 poles, N. 73 E. 18.7 poles, N. 11 W. 18.7 poles, S. 75¼ E. 34 poles, N. 1 E. 34 poles, N. 36½ W. 13 poles to a chestnut oak on a ridge at the head of a branch of Wolf Pen creek; thence

N. 64 W. 66 poles to a stake near a white oak marked "A. A. A.," S. 52 W. 11.3 poles, S. 74 W. 17.4 poles, west 26.7 poles, N. 78 W. 42 poles, N. 15 W. 80 poles; thence with the Indian Creek cliffs N. 61 W. 29 poles, N. 79 W. 18.5 poles, N. 82½ W. 25 poles, S. 42 W. 18 poles, S. 88 E. 35 poles, S. 60 E. 21 poles, S. 71 E. 14 poles, S. 8½ E. 27 poles, S. 57½ W. 18.6 poles, S. 48 W. 15 poles, S. 31¾ E. 36.3 poles, S. 26 E. 33.4 poles, S. 13 E. 18 poles, S. 42 W. 26 poles, N. 37 W. 27 poles, N. 73 W. 8.7 poles, N. 52 W. 19.8 poles, S. 18 W. 18.4 poles, S. 40½ E. 12 poles, S. 32 W. 20 poles, S. 48 W. 18.2 poles, N. 51½ W. 26.4 poles, N. 40 W. 18.6 poles, N. 30½ W. 16.7 poles, N. 36 E. 15 poles, N. 14½
13 E. 14 poles, N. 6 E. 16.7 poles, N. 1 W. 11.7 poles, N. 18 W. 12.7 poles, N. 47 W. 15 poles, west 7 poles, S. 32 W. 16 poles, S. 30½ E. 16 poles, S. 7 W. 13 poles, S. 72 W. 13 poles, N. 42 W. 10 poles, S. 89 W. 13 poles, N. 20 W. 17 poles, N. 35 W. 37.4 poles, N. 33 W. 33 poles, S. 79 W. 16 poles, S. 26 W. 13 poles, S. 77½ W. 10 poles, S. 57 W. 29.5 poles, S. 44 W. 20 poles, S. 71 E. 15 poles, N. 80 E. 10.5 poles, N. 60 E. 12 poles, S. 41½ E. 5 poles, S. 4½ W. 5 poles, S. 57 W. 5 poles, S. 77½ W. 24.4 poles, S. 48 E. 14 poles, S. 86½ E. 8 poles, S. 57½ E. 14 poles, S. 64½ E. 42.2 poles, S. 37½ E. 47.3 poles, S. 44 W. 14.5 poles, S. 80 W. 16 poles, S. 18½ W. 88 poles to a white-oak tree, S. 11½ W. 37 poles to three trees marked "J. H.," "W. H.," "O. F."; thence N. 88 W. 27.4 poles, S. 68 W. 75.4 poles, S. 71 W. 29 poles, S. 85¼ W. 26 poles, S. 82½ W. 42 poles, N. 69 W. 26 poles, N. 15½ W. 23.4 poles; thence N. 81½ W. 13 poles to a chestnut oak on a divide; thence S. 1 W. 344.2 poles, crossing Red river to the beginning, containing 5,065 acres 2 roods and 32 poles of land. That the lines around said boundry are well defined and plainly marked as line trees and corner trees; that James P. Magowan had said lines run and marked in 1841 or 1842, and the lines have been kept plainly marked since 1841 or 1842.

The defendant says that he and those claiming with him as aforesaid and those under whom they hold and claim said land have had the continuous, actual, adverse, uninterrupted, and peaceable possession of said land for more than fifty years last past, all the time holding, cultivating and controlling and claiming the same as their own, adverse to all the world; and that the plaintiffs' claim and cause of action, if any they or either of them e-er had, is stale and barred by lapse of time by the statutes of limitation, which are pled and relied on to defeat the plaintiffs in this action.

14 And, further answering, the defendant says that at the time that Thomas Duckham attempted to convey the land to Daniel Breck, if he ever did so, which is denied, that either William Gray or James P. Magowan, the remote grantors of this defendant and under whom he claims, were in the actual adverse possession od said land, and the said deed is champertous, null and void, and passed no title to said Breck; and he denies that either Duckham or Breck ever had any title to said land or ever were in possession of the same or any part of it.

And, further answering, he says that on the 13th day of September, 1865, and for several years before and after that time, Lindsay and Glover, defendants' vendors, were in the actual adverse posses-

sion of all the land claimed by this defendant in this answer, holding the same adverse to all the world, and that the pretended deed from Daniel Breck to N. C. Morse, Sr., and others is champertous, null and void, and passed no title to said Morse or to any one, and he denies that said Morse ever had any title or interest in said land.

And, further answering, he says that the deed from Duckham to Breck and the deed from Breck to Morse are void for uncertainty and are also void as to this defendant because neither of them were ever recorded in the county where the land or any part of it was or is situated; that no part of the John Carnan 10,000 patent, under which the plaintiffs claim, was ever situated in Estill county or Owsley county; that the whole of said patent has been situated in the counties of Montgomery, Powell, and Menifee since 1829; the defendant and those holding with him had no notice or knowledge of said deeds or either of them at the time they purchased said land, and in good faith bought and paid a valuable consideration
15 for said land and received a deed from the legal title holders and the possession of the land without notice or knowledge of said deeds or either of them, and they are innocent purchasers and are entitled to be protected as such.

He denies that the deed from Thomas Duckham to James P. Magowan is void. Magowan was the owner and in possession of the land at the time he accepted the deed from Duckham, and he only purchased from Duckham to buy his peace and to remove a cloud off of the land.

He says that the defendants Henry Estes and Green Estes were his tenants at the institution of this suit and he asks to be allowed to defend for them and to protect them; that they claim no interest in the land and have no possession of it.

He says he is not in possession of and has not been in possession of any land claimed by plaintiffs in their petition out of the boundary herein claimed by him, nor does he set up claim to any part of the land claimed by the plaintiff- outside of said boundary.

The facts stated in this answer are true to the best knowledge and belief of this defendant; all of which matteres and things he is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Wherefore he prays for all proper relief.

H. C. LILLY AND JAMES O'HARA, *For Def't.*

STATE OF KENTUCKY, *County of Montgomery,* } *ss:*

The defendant John Jay Anderson says he believes the
16 statements contained in the foregoing answer are true.

JNO. JAY ANDERSON.

UNITED STATES OF AMERICA, *District of Kentucky,* } *ss:*

At the town of Mount Sterling, in the county of Montgomery, State of Kentucky, and district aforesaid, this the 3rd day of De-

cember, 1885, personally appeared before me, Thomas M. Priest, clerk of the Montgomery county court, the above-named John Jay Anderson, and made oath that the facts set forth in the foregoing answer, so far as they purport to be stated of his own knowledge, are true, and so far as they purport to be stated on information and belief he believes them to be true.

Given under my hand this the third day of December, 1885.

T. W. PRIEST,
Clerk of the Montgomery County Court,
By J. C. BROWN, *D. C.*

And on December 7th, 1885, the following order was entered herein, viz:

N. C. MORSE *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came John Jay Anderson, O. D. Forkner, The Central Kentucky Lumber, Mining, Manufacturing and Transportation Company, and D. Congleton, by their attorney, H. C. Lilly, Esqr., and filed their answers herein. Came again said defendants, by their said attorney, and filed the following exhibits herein: Deed from J. M. Thomas to the Central Ky. L., M., M. & T. Company; deed from D. Congleton to J. M. Thomas, agent; deed from
17 D. Congleton to James M. Thomas; deed from Stephen De Hart to Darius Congleton; deed from Darius Congleton and others to J. M. Thomas, agent, deed from O. D. Forkner to Stephen and Joshua De Hart, and deed from J. M. Thomas to the Central Kentucky Lumber, Mining, Manufacturing and Transportation Company. Upon the further motion of said defendants, the court being advised, it is ordered that plaintiffs have forty days after the filing of answers in which to file replies, and that defendants have twenty days thereafter in which to file rejoinders. Upon the further motion of said defendants, the court being advised, it is ordered that plaintiffs within thirty days make an additional deposit as security for costs herein.

And on the same day the following order was entered, viz:

N. C. MORSE *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came both plaintiffs and defendants, by their respective counsel, and, by leave of court, file and enter the following agreement: "It is agreed by the parties to the above suit that the depositions taken and now on file in this court in an action in chancery lately pending therein, wherein the said N. C. Morse, Jr., was complainant and the said Charles Evans, John Jay Anderson, and others were defendants, being case No. 1289, may be read on the trial of this action as though said depositions were taken and filed in this action, subject, however, to legal exceptions for incompetency and

irrelevancy of the testimony; this agreement to be entered on the order book of said court and made a matter of record at the next term of the court, and the cause to be continued to the May
18 term, 1886. December 1st, 1885. H. C. Lilly & O'Hara & Bryan, for defendants, and Irving Halsey, for plaintiffs. The clerk to insert the name of Alexander and Burt Spencer in petition and caption, and changing portions thereof by way of amendment before answers filed."

And on a day following, to wit, on the 10th day of January, 1886, came the plaintiffs and filed a reply to the answer of John Jay Anderson, one of the defendants herein. Said reply was and is in words and figures as follows, viz:

Circuit Court of the United States, District of Kentucky.

NATHAN C. MORSE, JR., &c., Plaintiffs,
vs.
JOHN JAY ANDERSON, &c., Defendants. } Reply to Answer of John Jay Anderson.

Plaintiffs, for reply to the answer of John Jay Anderson herein, say it is not true, as stated in said answer, that said Daniel Breck, Nathan C. Morse, Sr., or the plaintiffs were at any time seized or possessed of any part of the land claimed by the defendant John Jay Anderson, or that they or any of them never asserted any claim or interest in or to any part of said land until recently. On the contrary, said Breck, Morse, Sr., and plaintiffs have for many years claimed to own and have owned said land; the said Breck claimed to own said land from the date of Duckham's deed to him till his sale of the same to Morse, Sr., and the said N. C. Morse claimed to own said land from the time of said sale by Breck to him. The said N. C. Morse, Jr., has continuously claimed his interest in said land from the date of the death of N. C. Morse, Sr., and the said Charles Evans has claimed his interest therein from the time
19 of his purchase of the same, as alleged in plaintiffs' petition herein.

Plaintiffs say that they have not information sufficient to form a belief, and therefore they deny that the deed from Duckham to Breck was never recorded in Montgomery county. They deny that all of said land lay in Montgomery county when said deed was made or that it all now lies in Powell or Menifee counties. They deny that no part of said land was ever in Estill county. They deny that said deed was not recorded in any county in which said land or any part of it was or now is situated. They deny that said deed was never recorded in any county in which any part of the land claimed by the plaintiffs is situated. They deny that defendant Anderson or those under whom they hold never had knowledge or notice of said deed until within the last few years or until many years after they had bought and paid for the land in good faith.

They deny that the deed from Daniel Breck to Nathan C. Morse, Sr., and others was never recorded in any county in which the land

claimed by the plaintiffs or the land claimed by the defendants or any part or either is situated.

They deny that defendant Anderson and those holding with him had no notice or knowledge of the said deed until recently and long after they had bought and paid for said land.

Plaintiffs deny that any well-defined marked boundary was ever made around said tract of land claimed by defendant Anderson and those claiming with him before 1873.

Plaintiffs deny that defendant Anderson and those claiming with him or any one or more of them owned twenty-eight hundred acr-s of the land claimed by plaintiffs herein or any other quantity of said land.

20 Plaintiffs deny that defendants John Jay Anderson and those holding with him are the joint owners or are owners at all of the tracts or boundaries of land described in his answer or of any part thereof, or that they or any of them have any interest therein.

They deny that the line- around said boundary or boundaries or any of them are well defined and plainly marked as line trees and corner trees; that James P. Magowan had said line- run and marked in 1841 or 1842, and that they have been kept plainly marked since 1841 or 1842. On the contrary, they say that said lines never were plainly marked and to a great extent never were marked at all, at least prior to 1873, when defendant Anderson and those associated with him made some sort of an effort to mark the same, but even then they gave no notice to plaintiff- or to N. C. Morse, Sr., under whom plaintiffs claim, and large portions of the pretended line of Anderson and his associates were then left unmarked, and little or none of said lines were so marked as to constitute a plainly marked, well-defined line.

And plaintiffs deny that said James P. Magowan or any of his grantees, including defendant Anderson and his associates, ever had a plainly marked, well-defined line or lines around said tracts or either of them claimed by said Anderson in his answer herein for himself and those associated with him.

Plaintiffs deny that said John Jay Anderson and those claiming with him and those under whom they hold and claim said land or any one or more of them have had the contin-ous, actual, adverse, uninterrupted, or peaceable possession of said land for more than fifty years last past, all the time holding, cultivating and controlling and claiming the same adverse to all the world. They deny

21 that plaintiffs' claim and cause of action is stale or barred by lapse of time or by the statutes of limitation.

Plaintiffs say that it is not true and they deny that at the time Thomas Duckham sold said land to Daniel Breck either William Gray or James P. Magowan was in the actual adverse possession of the same. They deny that said deed is champertous, null or void, or that it passed no title to said Breck. They deny that neither Duckham or Breck never had any title to said land or never were in possession of any part thereof. They say that James P. Magowan claimed under said Duckham and took and accepted from said

Duckham a deed to a small portion of the land which they now claim; that said Magowan by said deed sold and relinquished all the balance of said lands lying in the John Carnan 10,000-acre tract to said Duckham; and they say the defendant John Jay Anderson and those claiming jointly with him under said Magowan are now estopped to deny the title to said Duckham; and they further say that in a suit in this honorable court in which plaintiff N C. Morse, Jr., was complainant and defendant John Jay Anderson and those claiming with him were defendants said Anderson and those claiming with him set up and relied upon said deed from Duckham to Magowan and claimed to hold under the same, and they are now estopped to deny said title of Duckham or their claim thereunder, and plaintiffs plead said pleading of defendant Anderson and those associated with him as an estppel. They say that the question at issue in said cause was the ownership and the right to the possession of the land in controversy in this action.

Further replying, plaintiffs say that it is not true and they deny that on the 13th day of September, 1865, or at any other time or for several years before and after that time, that Lindsay and Glover or either of them was or were in the actual, adverse possession
22 of all or any part of the land claimed by defendant Anderson, holding the same adverse to all the world, or that the deed from Daniel Breck to N. C. Morse, Sr., and others is champertous, null or void, or that it passed no title to said Morse or to any one, and they say that it is not true that said Morse never had any interest in said land.

Plaintiffs deny that either the deed from Duckham to Breck or from Breck to Morse is void for want of uncertainty or that they are void as to defendant Anderson or that neither of them was ever recorded in the county where the land or any part of it was or is situated. They deny that no part of the John Carnan 10,000-acre patent was ever situated in Estill county or Owsley county. They deny that the whole of said patent has been situated in the counties of Montgomery, Powell, and Menifee since 1829. They say that parts of said patent now is and for many years has been in the county of Wolfe, and that plaintiffs' deeds are there recorded. They deny that plaintiff and those claiming to hold with him had no knowledge of such deeds or either of them at the time of their pretended purchase. They deny that they bought or that they could have bought and paid for said land in good faith. They deny that the said defendant received a deed from the legal title holders, and they deny that they received any possession of the land from the legal title holder or holders. They deny that said defendants are innocent purchasers, and that they are entitled to be protected as such.

Plaintiffs say that the deed claimed by defendant- in their answer to be a compromise deed between Magowan and Duckham and which was at the time of their pretended purchase of record in Montgomery county, Kentucky, was of itself sufficient to give
23 them notice that said Magowan did not own the land attempted to be conveyed to them by those holding under him,

and that, on the contrary, it gave them full notice that all the land in said 10,000-acre tract within said boundary claimed by the defendant Anderson and his associates in such claim belonged to Duckham and his grantees, except a very small portion thereof lying below the bases of the cliffs and hills.

Plaintiffs deny that Magowan was the owner or in possession of the land at the time he accepted the deed from Duckham, and they deny that he only purchased from Duckham to buy his *paece*. They say, however, that the purpose for which he purchased is immetarial and cannot affect the rights of these plaintiffs, &c.

Wherefore they pray as in their petition.

IRVING HALSEY,
Their Attorney.

Plaintiff N. C. Morse, Jr., being duly sworn, says that the matters and things set out in the foregoing reply are true, as he believes.

N. C. MORSE, JR.

Sworn to and subscribed before me this 1st day of January, 1886.

T. W. PILLSBURY,
Notary Public in and — Hontin County, Iowa.

And on a day following, at a regular term of said court, to wit, on Monday, December 12th, A. D. 1887, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

24 This cause coming on to be heard, came the parties, plaintiff and defendant, by their respective attorneys, and having announced ready for trial, came the following jury, to wit, W. W. Allen, William Bell, George Carpenter, David Kirkland, H. Feltman, Jr., S. B. Davis, J. A. Riddell, D. J. Burchett, W. A. Riggs, George W. Pratt, J. J. Rice, and John F. Crouch, who were elected, tried, and sworn well and truly to try the issue joined. The jury heard a portion of plaintiffs' evidence and, the hour for adjournment having arrived, were cautioned by the court and discharged from the further consideration of the case until to-morrow morning at 9.30 o'clock.

And on December 13th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came again the parties, plaintiff and defendant; came again also their respective attorneys; came also again the jury heretofore selected herein. The plaintiffs brought before the court and

jury the remainder of their testimony and the defendants began their case. Whereupon, the hour of adjournment having arrived, the jury were cautioned and discharged from the further consideration of this case until to-morrow morning at 9.30 o'clock.

And on December 14th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came again the parties, plaintiff and defendant, by their respective attorneys; came again also the jury herein.

25 The hour for adjournment having arrived and defendants not having concluded the introduction of their testimony, the jury were cautioned by the court and the further hearing of the case continued until to-morrow morning at 9.30 o'clock.

And on December 15th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came again the parties, plaintiff and defendant, by their respective attorneys; came again also the jury herein. The defendants having concluded the introduction of their testimony and the hour for adjournment having arrived, the further consideration and hearing of this case is continued until to-morrow morning at 9.30 o'clock.

And on December 16th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came again the parties, plaintiff and defendant, by their respective counsel; came again also the jury herein, who, having heard all the evidence and argument of counsel, were instructed by the court upon the law of the case and retired to consider of the matters and things before them. Presently returning into court, they presented the following verdict, viz: "We of the jury agree and find for the defendants. D. J. Burchett, foreman."

Whereupon it is ordered by the court that the defendants herein have and recover of the plaintiffs their costs herein expended,

26 to be taxed, for which they may have execution.

And on December 17th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came the plaintiffs by Messrs. Hargis, Halsey and Fisk, their attorneys, and upon their motion, the court being advised, it is ordered that the plaintiffs be and they now have ten days in which to file their bill of exceptions herein.

And on December 17th, 1887, the following order was entered herein:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came the plaintiffs, by their attorneys, Messrs. Halsey and Fisk, and filed their motion and grounds for a new trial herein; to the filing of which defendants, by their attorneys, James O'Hara, Esqr., objects; said objection is overruled. It is ordered that plaintiffs have eight days from the entry of this order in which to file briefs on their said motion, and defendants are allowed three days thereafter in which to file their briefs upon said motion.

Said motion and grounds for a new trial were and are in words and figures as follows, viz:

Circuit Court of the United States, District of Kentucky.

27 N. C. MORSE, JR., & CHAS. EVANS, Plaintiffs, *vs.* JOHN JAY ANDERSON, &c., Defendants. } Motion and Grounds for a New Trial.

Plaintiffs move the court to vacate and set aside the verdict of the jury and the judgment of the court herein, and moved for a new trial herein upon the following grounds:

1. That the verdict was against the law and contrary to law.
2. That the verdict was against the evidence and contrary to the evidence.
3. For error of law occurring at the trial to plaintiffs' prejudice and excepted to by plaintiffs at the time.
4. For error of the court in excluding material and legal evidence for plaintiffs, to which plaintiffs excepted at the time.
5. For error of the court in admitting illegal and improper evidence for defendants, to which plaintiffs excepted at the time.
6. Because the court gave illegal and improper instructions to the jury to the prejudice of plaintiffs, to which plaintiffs then and there excepted.
7. Because the court refused to give legal, proper, and pertinent instructions when requested so to do by plaintiffs, such refusal being

to the prejudice of plaintiffs and being then and there excepted to by plaintiffs.

8. Because the court decided questions of fact which should have been left to the jury, and to which action and decision of the court plaintiffs then and there excepted.

9. For other errors of law occurring at the trial to the prejudice of plaintiffs and excepted to by them at the time.

10. Because the verdict is not sustained by sufficient evidence.

11. Because the court charged the jury that the deed of
28 John M. McCalla to Thomas Duckham was insufficient to pass the legal title to the land attempted to be conveyed thereby. Said deed bears date August 23rd, 1839.

11. Because the court excluded the copy of the deed of Duckham to Daniel Breck, marked "A," dated July 17, 1838, from the consideration of the jury.

12. Because the court charged the jury that the deed from Thomas Duckham to Daniel Breck was not recorded in the county where the land in controversy lay at the time of such recording.

13. Because the court instructed the jury that it was necessary for plaintiffs to deduce their title from the Commonwealth.

13. Because the court instructed the jury that an abandonment of possession of the premises in controversy by plaintiffs' tenant, although brought about and instigated by defendants, would be equivalent to an abandonment by plaintiffs.

14. Because the court refused to instruct the jury that when defendants induced plaintiffs' tenant to desert his possession and place another tenant in possession of the leased premises that such new tenancy enured to the benefit of plaintiffs and such new tenants became the tenants of plaintiffs.

15. The court erred in holding and in charging the jury that the copy of the deed from Thomas Duckham to Daniel Breck was not evidence and was incompetent as evidence and could not be read by plaintiffs or considered by the jury and in excluding the same as evidence.

16. The court erred in deciding the question of fact as to whether or not any part of the land embraced in and described in the copy of deed of 1838 from Thomas Duckham to Daniel Breck, marked "A," lay in the county of Estill, where said deed was re-
29 corded, when this was a question to be determined by the jury from the evidence in the cause during and upon the trial thereof.

17. The court erred in holding and charging the jury that as a matter of fact none of the lands in the said copy of said deed "A" from Thomas Duckham to Daniel Breck of 1838 lay in the county where said deed was shown by the certified copy to have been recorded, and that said copy was not evidence, and that the recording of said deed in said county did not give constructive notice to any person or party of the claim of title to and of the sale and conveyance of the lands therein described, and in excluding and rejecting said copy of said deed as evidence.

18. The court erred in holding and charging the jury that plain-

tiffs were bound as matter of law to trace their title by regular paper or record title connectedly from the Commonwealth of Virginia to themselves, and that plaintiffs had failed so to do, and that the chain of title was incomplete as to plaintiffs, and that they were not entitled to recover on their own title and had failed to make out a case.

19. The court erred in holding and charging the jury that the copy of the deed from McCalla to Duckham, dated August 23rd, 1839, was not sufficient in law to pass legal title to any of the lands therein described to the vendee named therein; and, further, the court erred in rejecting said copy of said deed as a link in plaintiffs' chain of title and in adjudging the same incompetent as evidence to sustain plaintiffs' legal title.

20. The court erred in holding and charging the jury that plaintiffs were in law compelled to establish legal title in themselves behind Thomas Duckham, and in holding and charging the jury that plaintiffs and defendants did not claim title from or
30 under the same parties or from a common source.

21. The court erred in holding and charging the jury that parties defendant had the right to secure or procure the abandonment of the possession by the tenant of plaintiffs, and then during the term of the lease from plaintiffs to Elkannah Townsend to secure the abandonment by Townsend of plaintiffs' possession, and attempt to permit a tenant of defendants or some of them to enter into and upon the house and premises occupied by Townsend as plaintiffs' tenant, and that the possession acquired by the parties put into the same by the parties became the tenant of such defendants and his holding adverse to plaintiffs and their tenants.

22. The court erred in holding and charging the jury that defendants could claim the entire lands and possession of the lands as against plaintiffs and all others without limit or restriction, notwithstanding the reservations in the deeds from Thomas Duckham to Green Hall, to David Shawley, and James P. Magowan.

23. The court erred in not instructing and charging the jury that plaintiffs were entitled to recover all of the lands in controversy except those to which the defendants in this cause were asserting title and adverse possession.

24. The court erred in charging the jury as to adverse holding and possession.

25. The court erred in charging the jury in effect to find for the defendants, because plaintiffs had failed to establish title.

To all of which errors the said plaintiffs then and there excepted.

THOS. F. HARGIS,
J. F. & C. H. FISK, &
I. HALSEY,
Attorneys for Plaintiffs

31 And on a day following, to wit, on the 24th day of December, 1887, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*, Plaintiff-,
vs.
JOHN JAY ANDERSON *et al.*, Defendants.

This day came the plaintiffs, by Thomas F. Hargis and Irving Halsey, Esqr., and presented to the court their bill of exceptions herein. The court, not being fully advised, takes time, and it is ordered that said bill of exception- be and same is now endorsed "tendered;" and it is further ordered that until January 20th, 1888, be given to plaintiffs as further time in which to complete their said bill of exceptions so tendered as aforesaid.

And on a day following, to wit, on the 14th day of January, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*, Plaintiffs,
vs.
JOHN JAY ANDERSON *et al.*, Defendants.

On the court's motion, it is now ordered that the plaintiffs have and they are now given until the 15th day of March, 1888, in which to prepare and tender another bill of exceptions herein.

And on a day following, to wit, March 12th, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

On the court's motion, it is now ordered that the order heretofore entered herein, to wit, on the 14th day of January, 1888,
32 be and the same is now amended and changed to read as follows, viz: It is ordered that plaintiffs have and they are now given until the 2nd day of the next regular term of this court, Tuesday, May 15th, 1888, in which to prepare and tender another bill of exceptions.

And on a day following, to wit, on the 3rd day of May, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This cause coming on to be heard upon motion of plaintiffs for a new trial herein, the court, now being fully advised, files a written opinion and orders and adjudges that said motion as to the defendant John Jay Anderson be, and same is, overruled, but as to the remaining defendant-, viz., Henry Estes, Green Estes, O. D. Forkner, Darious Congleton, Stephen De Hart, Docky De Hart, Wesley Spencer, The Central Kentucky Lumber, Mining, Manufacturing

and Transportation Company, Burt Spencer, and Alex. Spencer, it is ordered and adjudged that said motion be, and same is, sustained, and as to said defendants as aforesaid the verdict herein rendered is set aside an- the plaintiffs are granted a new trial. It is further ordered by the court that all questions of costs arising out of the former trial herein stand open to be passed upon and determined after a new trial herein is had.

The opinion of the court mentioned in the foregoing order is in words as follows, to wit:

33 N. C. MORSE, JR., *et al.*, Plaintiffs,
against
JOHN JAY ANDERSON *et al.*, Defendants.

The plaintiffs have made a motion for a new trial and stated many grounds therefor. There are only three of the grounds which need be noticed or considered; these are:

1. That the court erred in the charge to the jury in saying that plaintiffs, if they relied upon a paper title, must trace this title back of Thomas Duckham, and that the deed to him (Duckham) from John McCalla, collector, in August, 1839, did not of itself prove the steps necessary to make a valid assessment and levy of the taxes for which it was alleged John Carnan's 10,000-acre tract was sold.

2. In refusing to allow to be read as evidence a copy of an alleged deed from Thomas Duckham to Daniel Breck, dated July 17th, 1838, upon the ground and for the reason it had not been recorded in the county in which the 10,000-acre tract or any part of it was situated. This copy was made by the clerk of Estill county court and purported to be a copy of a deed acknowledged and recorded in his office, and the court, in refusing to allow it to be read, determined the question of its competency, instead of allowing the jury to determine that question.

3. In saying to the jury that the plaintiffs could not in this action recover the mining and mineral rights which were reserved by Thomas Duckham in his deeds made subsequently to July, 1838, and after the time which plaintiffs claim he had conveyed the fee simple to Daniel Breck.

These grounds will be considered in the reversed order in which they are stated.

34 The mineral rights and privileges which were reserved in the deeds of Thomas Duckham to Green Hall and David Shawley could not be recovered in this action, because it is based upon a title acquired from Thomas Duckham in 1838 to Daniel Breck, which is on its face a fee simple, and thus plaintiffs' title, if any, is utterly inconsistent with a recovery of rights reserved by Thomas Duckham in 1841 and by deeds which plaintiffs repudiate as being without the authority of Breck and as passing no right whatever. Besides, the plaintiffs set up no such claim in the petition and have made no allegation upon which relief could be granted.

The copy offered as evidence of the deed alleged to have been executed by Duckham to Breck was certified by the clerk of Estill county court as being a copy of a deed recorded in his office and acknowledged before his predecessor. Whether or not this copy was competent evidence was, like other questions of competency, one to be determined by the court and not by the jury. It is not suggested the court erred in its conclusion upon the evidence offered as to the location of this 10,000-acre tract of land.

The recitals in the deed from John McCalla to Thomas Duckham were made by a stranger to the tax sale, and made twenty-odd years after this sale was said to have been made. Clearly these recitals are not sufficient to establish a valid assessment of the property for taxation and pass a good title to Duckham under a tax sale. Besides, if these recitals are evidence, they are not of themselves sufficient to show a compliance with the law so as to pass a good title.

The instructions given the jury that under the issues made the plaintiffs must prove a title back of Thomas Duckham was given upon the idea that plaintiff- must recover, if at all, upon the
34½ strength of their own title, and hence if there was to be a recovery upon a paper title alone that title must run back to the Commonwealth. This is certainly the general doctrine in regard to the recovery of land, but there are exceptions, and whether this case is one under the issues made and the evidence produced is the question we shall now consider.

The petition alleged that they were the "owners and entitled to the possession" of certain described lands; it also stated that said land was conveyed to Daniel Breck by Thomas Duckham by deed dated July 17th, 1838, and by Breck to N. C. Morse in 1865, and gave the chain of title from N. C. Morse to the plaintiffs. It is alleged that all of the defendants claimed title under the pretended conveyances from said Duckham of later date than that from Duckham to Breck in 1838, but that said pretended conveyances are void and of no effect. The defendants' answers are not paragraphed nor defenses clearly and distinctly presented, but they are each of them intended and do in a general way traverse the allegations of the petition and set up affirmatively the plea of the statute of limitation and adverse possession of more than twenty years, a plea of champer-y by reason of their adverse possession at the time of the conveyance by Daniel Breck to Morse, and also a claim as purchasers for a valuable consideration without actual or constructive notice of either of the conveyances made by Duckham to Breck or by Breck to Morse. They do not, however, claim to have bought of Thomas Duckham or from those holding under him in direct terms. The defendant Anderson sets out the title of the land claimed by him as being derived from James P. Magowan, and states that "Magowan was the owner and in possession of the land at the time he accepted the deed from Duckham, and he only purchased from Duckham to buy his peace and to remove a cloud off of his land."
35 The plaintiffs in presenting their case introduced and read as evidence a copy of a deed between Thomas Duckham and

James P. Magowan, dated September 9th, 1841, in which it is recited the parties to the deed have conflicting and a-verse claims, which they settle and compromise by the deed. The plaintiffs did not prove by any evidence that Magowan held at that time under Thomas Duckham the land which he was in possession of, or that he abandoned his claim or possession and entered and held under this deed of September 9th, 1841. The defendant Anderson offered some evidence which sustained the recital of this deed and tended to prove Magowan entered into possession and held adversely to Duckham. I do not think, therefore, the acceptance by Magowan of this deed of Duckham prevented Anderson from denying Duckham's title and requiring proof thereof. I do not understand there is any objection made by the plaintiffs to the instruction given upon the effect of this deed of Duckham to Magowan as to his (M.) possession. This instruction was perhaps unnecessary, but it was given at the request of one of plaintiffs' counsel.

The answer to the other defendants is different from that of Anderson in respect to the title their remote grantors acquired. They do not state that their remote grantors acquired or claimed title from Thomas Duckham by name, but on the trial proved that fact. Thus the answer of the Central Kentucky Lumber Mining Company states "that the deed from Duckham to Breck was never recorded in Montgomery county, where said land was situated, nor in Powell or Menifee counties, where it is now situated; that no part of said John Carnan 10,000-acre survey was ever in Estill county or Owsley county; that defendants bought and paid for said land of the defendant Darious Congleton who was then in the actual possession and had the legal title thereto, without any notice or
36 knowledge of either of said deeds (Duckham to Breck and Breck to Morse), and it is an innocent purchaser and entitled to be protected as such; that Green Hall, O. D. Forkner, Darious Congleton, defendants' grantors, each bought and paid for said land in good faith and without any notice or knowledge of either of said deeds and defendants' title is not affected by them."

The answer of O. D. Forkner is substantially like that of the Lumber Mining Company, and the answer of Wesley Spencer and others makes the additional statement that Green Hall, under whom they claim, "was in the actual adverse possession at the time of said pretended sale and the making of said pretended deed."

As the defendants had traversed the allegation of the petition and denied plaintiffs' title, I gave the charge upon the idea the affirmative defenses need not be considered by the jury unless the plaintiff make out a good paper title from the Commonwealth, as that was the only kind of a title under the evidence they had. This was correct as to the defendant Anderson for the reason given, and I am inclined to think would have been correct had the case rested alone on plaintiffs' evidence; but when the defendants proved the deed from Thomas Duckham to Green Hall, dated September 11th, 1841, and the deed from Duckham to David Shawley, dated December 16th, 1841, and traced their title and possession back to these deeds, was the charge not incorrect? Although this evidence was

offered by the defendant- to sustain their affirmative defenses, I am of the opinion, after a careful examination of the authorities, that these defendants were thereafter precluded from disputing Duckham's title, and that my instructions to the contrary was error. After this evidence defendants claimed under Duckham's title and could not thereafter require the plaintiffs to prove their title
37 back to the Commonwealth.' See 2 Greenleaf Ev., sec. 307; Seabury *vs.* Stewart, 22 Ala., 207; Hightower *vs.* Williams, 38 Ga., 597; Wortham *vs.* Cherry, 3 Head., 468; Sexton *vs.* Rhams, 13 Wis., 99; Coan *vs.* Joyce, 3 Bush., 455; Alsop *vs.* Ware, MSS. Op., Ky. Law Rep., *pp.* 366; Mining Company *vs.* Taylor, 100 U. S. R., *pp.* 40.

But it is suggested that although this part of the charge may be error the court should not grant a new trial because the evidence clearly proved that defendants were in the adverse possession of the land claimed by them at the date of the deed from Daniel Breck to Morse in 1865, and that therefore this conveyance was champertous and void; also that the evidence proved the defendants had been in possession of the land for more than thirty years before the bringing of this suit, and hence the statute of limitations barred the action. These defenses may or may not have been sustained by the evidence, but whether they were or not depended upon the findings of the jury under the law to be given by the court. On the plea of champerty it was necessary in any event for the jury to find whether or not the defendants were in possession and the extent of that possession in 1865, when the conveyance of Breck to Morse was said to have been made. On the plea of the statute of limitations, the time when the plaintiffs' cause of action first accrued was a fact to be found by the jury. The court cannot assume that the jury would have found in favor of the defendants upon these issues.

It follows that the plaintiffs, because of the error in the charge, are entitled to a new trial, except as to the defendant John Jay Anderson, and it is so ordered. The costs of the trial heretofore had is to be according to the result of a new trial. The motion for a new trial as to the defendant Anderson is overruled.

J. W. B

38 And on a day following, to wit, on Monday, May 14th, 1888, the following order was entered herein, viz:

N. C. Morse, Jr., *et al.*
vs.
John Jay Anderson *et al.*

The court being advised, it is ordered that the plaintiffs have and they are now given until the 18th day of June, 1888, in which to prepare and tender a bill of exceptions herein.

And on a day following, to wit, on Thursday, May 24th, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

Came the plaintiffs and moved the court for a reconsideration of the order overruling the motion for a new trial in this cause as to John Jay Anderson, and the same, being argued by counsel, is submitted, and the court takes time.

And on a day following, to wit, on the 11th day of June, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This cause being heard on the motion of plaintiffs for a reconsideration of the order overruling plaintiffs' motion for a new trial herein as to John Jay Anderson, one of the defendants herein, the court, now being fully advised, overrules said motion and refuses to set aside said order and grant a new trial as to said John Jay Anderson.

39 And on a day following, to wit, on Monday, June 18th, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

On the court's motion, it is now ordered that the order heretofore entered herein, to wit, on the 12th day of March, 1888, be and the same is now changed to read as follows, viz: It is ordered that plaintiffs have and they are now given until Monday, the 2nd day of July, A. D. 1888, in which to prepare and tender a bill of exceptions herein.

And on a day following, to wit, on the 11th day of December, 1888, the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

This day came the plaintiffs, by their attorneys, Irving Haisey and Thomas F. Hargis, Esqrs., and moved the court to make an order as of July 2nd, A. D. 1888, granting them until the fourth Monday in December, 1888, to have signed a bill of exceptions heretofore delivered to the judge of this court; whereupon, the court being advised, it is ordered and adjudged that said motion be, and the same is, overruled; to which ruling of the court the plaintiffs, by their attorneys as aforesaid, come and except.

And on the same day the following order was entered herein, viz:

N. C. MORSE, JR., *et al.*
vs.
JOHN JAY ANDERSON *et al.*

40 This day came the plaintiffs, by their attorneys, Irving Halsey and Thomas F. Hargis, Esqrs., and moved the court to extend the time in which to tender, complete, and have filed a bill of exceptions as to John Jay Anderson, one of the defendants herein, to the 1st day of January, A. D. 1889; whereupon the court, not being advised, takes time and said cause is submitted on said motion.

And on a day following, to wit, on the 1st day of April, A. D. 1889, a bill of exceptions was signed, sealed, and ordered to be made part of the record herein. Said bill of exceptions was and is in words and figures as follows, viz:

Circuit Court, Sixth Circuit, District of Kentucky.

NATHAN C. MORSE, JR., & CHARLES EVANS, Plaintiffs,
vs.
JOHN JAY ANDERSON *et al.*, Defendants.

Be it remembered that heretofore, to wit, at a term of the circuit court of the United States for the district of Kentucky begun and held at the city of Covington, in said district, and commencing on the first Monday of December, A. D. 1887—

The parties announced themselves ready and, the jury having been sworn, the plaintiffs read in evidence a certified copy of a patent to John Carnan for ten thousand acres of land lying in the county of Fayette, in the State of Kentucky, dated on the 4th day of January, 1786. Said copy is marked "B" and is as follows:

Patrick Henry, Esq., gove-nor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

41 Know ye that by virtue and in consideration of a land-office Treasury warrant No. 18707, and issued the 14th day of August, 1785, there is granted by the said Commonwealth unto John Carnan, assignee of Micheal Ryon, a certain tract or parcel of land containing ten thousand acres by survey bearing date the 8th day of May, one thousand seven hundred and eighty-four, lying and being in the county of Fayette and bounded as followeth, to wit: Beginning at the letter A, a hickory, being the northwest corner of a tract of land of thirty thousand three hundred and seventy-three and one-third acres surveyed for Samuel Young, and on a north nine degrees west line drawn from the mouth of the north fork of the three forks of Kentucky river, thence north nine degrees west eleven hundred sixty-six and two-thirds poles to a black oak, thence north eighty-one degrees east thirteen hundred and seventy-five

poles to a black oak, thence south nine degrees east eleven hundred sixty-six and two-thirds poles to a black oak, thence south eighty-one degrees west thirteen hundred and seventy-five poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Carnan and his heirs forever.

In witness whereof the said Patrick Henry, Esqr., governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the Commonwealth to be affixed, at Richmond, on the fourth day of January, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

[SEAL.] PATRICK HENRY.

A copy.
Attest: G. M. ADAMS, *R. L. O.*,
By THOS. H. CORBETT, *D. R. L. O.*

And read in evidence a certified copy of a deed from J. M.
42 McCalla to Thomas Duckham, dated August 23rd, 1839, marked "C," and is as follows:

STATE OF KENTUCKY, *Court of Appeals,* } *sct:*

This indenture, made and entered into this 23rd., day of August 1839 between John McCalla, collector of district taxes and internal revenue for the State of Kentucky of the one part and Thomas Duckham of the county of Lawrence and State aforesaid of the other part, witnesseth:—That whereas certain tracts or parcels of land situate, lying and being in the county of Montgomery in the first collection district was returned to John H. Morton, collector for the 2nd., collection district, he being the collector designated by the Secretary of the Treasury in pursuance of the acts of Congress of the 22nd., July 1813 and 9th., January 1815, by the collector of said 1st., district in the words and figures following, viz:—In the county of Montgomery the following tracts, viz:—Thirty-three thousand acres on Kentucky and Red rivers valued at three thousand three hundred dollars (3,300.00). Ten thousand acres on Red river valued at one thousand dollars ($1,000.00). Twenty-three thousand acres on Red river valued at two thousand three hundred dollars ($2,300.00). Twenty-two thousand acres on Licking and Red rivers, valued at two thousand three hundred dollars ($2,300.00). Total value $8,900.00.

Listed by me from the best information I could obtain.

ARCH. SUMMERS,
Ass't Assc'r 1st Dist., State of Kentucky.

And whereas the said John Carnan, the owner thereof, having failed to pay the taxes, &c., due thereon within the time prescribed by the acts of Congress aforesaid to the said John H. Morton
43 or any other person for him, the said John H. Morton, *or any other person for him;* — the said John H. Morton, as col-

lector as aforesaid, having first duly advertised the same according to law, did, on the — day of ——, 1816, at Lexington, cause the said tract of land to be exposed to public sale, agreeable to his advertisement and the acts of Congress in the cases made, to the highest bidder, when and where the said Thomas Duckham became the purchaser of the two tracts therein named, viz., the one of ten thousand acres on Red river and the one of 23,000 acres on Red river, the first for the sum of $4.68, the latter for $10.76, those being the sums due thereon for taxes, additions, and costs; and whereas the said Thomas Duckham hath this day presented to me a certificate from the clerk of the district court of the district of Kentucky in words and figures following, viz:

"There are two tracts of land on record in this office as having been sold for the direct tax in 1815 in the name of John Carnan, of Baltimore, one for 10,000 acres on Red river, and the other for 23,000 acres on Red river also, and purchased by Thomas Duckham. The former was sold for $4.68 and the latter for $10.76, neither of which tracts appear to have been redeemed, said lands lying in Montgomery county, 1st district.

"JNO. H. HANNA, *C. K. D. C.*,
"By R. SAMUEL, *D. C.*"

Now, for and in consideration of the premises and in virtue of the power vested in the said John M. McCalla, collector as aforesaid, by virtue of the several acts of Congress and the appointment aforesaid, he, the said McCalla, hath bargained and sold, and by these presents doth bargain, sell, alien, and convey, unto the said Thomas Duckham the said tract of land bounded as follows, viz:

Ten thousand acres bounded as follows: Beginning at the letter A, a hickory, being the northwest corner of a tract of land of
44 30,373½ acres surveyed for Samuel Young, and on a north 9 degree west line from the mouth of the north fork of the three forks of Kentucky river, thence north 9 degrees W. 1,166⅔ poles to a black oak; thence N. 81 degrees E 1,375 poles to a black oak; thence S. 9 degrees E. 1,166⅔ poles to a black oak; thence S. 81 degrees W. 1,375 poles to the beginning. Also 20,510 acres, bounded as follows, viz: Beginning at a black oak standing in the S. 9 degree E. line of a tract of land surveyed for P. D. Roberts, being 100 poles from the S. E. corner of said tract, thence N. 9 degrees W. 2,026¾ poles to a white oak; thence N. 81 E. 1,620 poles to a sugar tree; thence S. 9 degrees E. 2,026¾ poles to a hickory; thence S. 81 W. 1,620 poles to the beginning, the said tracts lying and being in the present county of Montgomery; to have and to hold the said tracts of land unto the said Thomas Duckham, his heirs and assigns forever.

In witness whereof the said John M. McCalla, collector
[SEAL.] as aforesaid, hath hereunto set his hand and seal this day and date first above written.

JNO. M. McCALLA,
Collector of Internal Rev. & District Tax.

COMMONWEALTH OF KENTUCKY, *Fayette County,* } *To wit:*

I, James C. Rodes, clerk of the county court for the county aforesaid, do certify that this deed from John M. McCalla, collector of internal revenue and direct tax, to Thomas Duckham was this day produced to me and acknowledged by the said John M. McCalla, as collector of internal revenue and direct tax, to be his act and deed, and ordered to be certified for record, which is done.

Given under my hand this 23rd day of August, 1839.

Att.: J. C. RODES, *Clerk.*

45 STATE OF KENTUCKY, *set:*

I, Jacob Swigert, clerk of the court of appeals for the State aforesaid, do hereby certify that the foregoing deed, together with the certificate thereon, was this day produced to me in my office and admitted to record.

In testimony whereof I have set my hand this 20th November, 1839.

J. SWIGERT, *C. C. A.*

A copy.
Attest: T. C. JONES, *C. C. A.*,
By JAS. McAULIFFE, *D. C.*

Plaintiffs then offered to read as evidence a certified copy (marked A) of a deed from Duckham to Daniel Breck, dated July 17th, 1838. Said deed is in words and figures as follows, to wit:

This indenture, made and entered into this 17th, day of July 1838, between Thomas Duckham of the State of Kentucky of the first part and Daniel Breck of the second part, witnesseth, that said Duckham in consideration of one thousand dollars paid to his satisfaction, befor- the delivery hereof, the receipt is hereby acknowledged, has and does by these presents give, grant, bargain, sell and convey to said Breck all his, the said Duckham's interest in a tract of land in the count- of Estill, Kentucky, patented in the name of John Carnan, containing 29,000 acres. Also all of said Duckham's interest in other tracts on Red river, one of 17,000 acres, patented to Das Simmons, also part of a tract the name of S. Young, also one claim of 10,000 acres and one of 23,000 acres to John Carnan, also a tract on Big Sandy, patented to Charles Vancouver of 8,000 acres, to have and to hold said granted and bargained premises to the said Breck his heirs and assigns forever. And said Duckham covenants to warrant and defend the same against all persons claiming
46 by, through or under him, except so far as he may have heretofore sold by written contract.

In witness whereof said Duckham hereunto sets his hand and seal this day and date first herein written.

THOMAS DUCKHAM. [SEAL.]

Witness:
ELIHU PARK.
MILTON G. MIZE.

KENTUCKY, *Estill County,* } *sct:*

I, Robert Clark, clerk of the court for the county aforesaid, do certify that this deed from Thomas Duckham to Daniel Breck was this day produced to me in my office and proven by the oaths of Elihu Park and Milton G. Mize, subscribing witnesses thereto, to be the act and deed of the said Duckham for the purposes therein named, and thereupon the same has been duly recorded in my office.

Given under my hand this 13th day of December, 1838.

ROBERT CLARK.

STATE OF KENTUCKY, *County of Estill,* } *sct:*

I, Samuel L. Tudor, clerk of the Estill county court, certify the foregoing is a true copy of deed from Thomas Duckham to Daniel Breck, as appears of record in my office.

Given under my hand and official seal this May 5th, 1886.

[SEAL.] SAMUEL L. TUDOR.

The defendants objected to the reading of this copy because this ten thousand (10,000) acres of land did not in 1838 nor any time since that time lie in Estill county, and therefore a copy of said deed certified by the county court of said county was not competent evidence.

The court, after hearing evidence as to whether or not this land lay in Estill county, decided that it did not lie in Estill
47 county in 1838, nor since that time, and therefore the certified copy offered to be read was not competent evidence. The plaintiffs excepted to this ruling and still except. Plaintiffs read as evidence a certified copy of a deed from Daniel Breck to N. C. Morse, marked "D;" which said copy is in words and figures as follows, to wit:

This indenture, made and entered into this 13th day of September, 1865, between Daniel Breck of Richmond, Kentucky of the first part and N. C. Morse, for himself and trustee, as hereinafter stated, of Covington, Kentucky, of the second part; witnesseth, that said Breck for the consideration hereinafter mentioned has and does by these presents sell, alien and convey to the said N. C. Morse, trustee &c., all the land in John Carnan's survey and grant of 29,823 acres allotted to him in the division between him and Haggin's heirs and Samuel Beatty & etc., by Thomas Hart, E. L. Cockerel and Bowles Harris, commissioners, under a decree of the Fayette circuit court in 1857, except what has heretofore been sold by him or by those under whom he claims of any one whose actual adverse possession had been so long as to bar a right of entry. Said Breck also sells and conveys to said Morse so much of the land allotted to Haggin's heirs in said grant in Owsley county as was transferred to him by A. B. McGuire and which was purchased by said McGuire

under execution against said Haggin's heirs. Said Breck also sells and conveys to said Morse the undivided interest in the land allotted to Haggin's heirs in said grant by said commissioners acquires by his purchase and deed from Amos Findrey who with B. F. Phillips purchased of part of said heirs their interest in said grant and which purchase by them is evidence- by deeds from John G. Price &c., to them of record in Owsley county court clerk's office, said Breck
48 also sells to said Morse his interest in any reservation of coal, iron, oil, or other minerals made by persons who may have heretofore sold and conveyed lands in said grant and said Breck undertakes if the land described and sold and conveyed as aforesaid fall short of 5,000 acres to convey or cause to be conveyed to said Morse so much other land in said grant as will make up the deficiency and should he fail so to do he binds himself to pay to said Morse two ($2.00) dollars per acre for such deficiency. Said grant lies north of the Kentucky river and mainly if not entirely in the counties of Estill and Owsley, the said Breck also sells and conveys to said Morse his title and interest in the following grants, to wit: A grant to John Carnan for ten thousand acres, surveyed the eighth day of May 1784 and patente- the 4th day of January 1786, also another grant for 20,570 acres in the name of John Carnan surveyed the 12th, day of May 1784 and patented the 4th, day of January 1786 also a grant for 22,000 acres in the name of Dean Timmins surveyed the 11th, day of May 1784 and patented the 4th, day of January 1786, also in a further tract granted to Samuel Young by patent bearing date the — day of —— 1780, containing by estimate upwards of 30,000 acres, said four tracts last named lie up in the north side of the Kentucky river, the three first have reference to the survey and grant of John Carnan first herein named, it having been first surveyed and being a basis upon whereto other surveys were made, said Breck sells and conveys to said Morse his title and interest in a tract of land lying between the middle and north forks of the Kentucky river, known as Franklin's grant and containing by estimation 116,500 acres. Said Breck's claims and undivided moiety of land in said grant excepting what had been heretofore sold by J. W. South and D. Breck Jr., or by said South and
49 himself or by persons acting as agents of those claiming under the patent and excepting also any land which has been in actual adverse possession of any one so long as to bar the right of entry, said Breck also excepts what is called the Pan Handle and what belongs to the Mill tract and any land to which he may have released his interest or contracted to sell. This deed is made for the consideration of twenty thousand dollars paid to the satisfaction of said Breck before the delivery hereof. To have and to hold said granted and bargained premises to said Morse for himself and as trustee for L. Lane, Charles F. Little and C. W. Clayton his heirs and assigns forever. But it is expressly understood and agreed between the parties that said Breck is not to be responsible for any defect of title to any of said land nor for any part thereof that this deed may not be available to secure to said Morse, trustee & etc. Except as to the lands in the first-named branch in regard to which

the covenant of said Breck aforesaid are to be binding, as to the residue he merely quitclaims.

Witnesseth whereof the said Breck sets his hand and seal the -ay and date first herein written.

DANIEL BRECK.

STATE OF KENTUCKY, } *sct:*
Madison County, }

I, James H. Embry, clerk of the county court for said *county court for said* county, do certify that the foregoing deed from Daniel Breck to N. C. Morse, for himself and as trustee, & etc., was produced to me in my office on the 13th day of September, 1865, and acknowledged by said Breck to be his act and deed wherefore said deed is certified to the clerk of the county court where the several tracts of land lie.

50 Given under my hand 13th day of September, 1865.

JAMES H. EMBRY, *Clerk.*

STATE OF KENTUCKY, } *sct:*
Owsley County, }

I, Elkannah Wine, clerk of the Owsley county court, do certify that the foregoing deed from D. Breck to N. C. Morse, for himself and as trustee, was produced to me in my office, duly certified and stamped; wherefore this deed and certificates are admitted to record in my office.

Given under my hand this 9th day of November, 1865.

ELKANNAH WINE, *Clerk,*
By G. W. DANIEL, *D. C.*

STATE OF KENTUCKY, } *sct:*
Lee County, }

I, K. F. Hargis, clerk of the county court in and for the county and State aforesaid, do hereby certify that the foregoing deed of conveyance and accompanying certificates, and same from Daniel Breck to N. C. Morse, &c., was this day produced to me in my office by said Morse and duly admitted to record here by me this 1st day of July, 1872.

K. F. HARGIS,
C. L. C. C.

STATE OF KENTUCKY, } *sct:*
County of Wolfe, }

I, S. M. Spradlin, clerk of the county and State aforesaid, do certify that the foregoing deed from Daniel Breck to N. C. Morse was this day produced to me in my office, and by virtue of the various certificates thereon the said deed and the certificates thereon and this certificate has this day been duly recorded in my office.

Given under my hand this 13th day of December, 1875.

S. M. SPRADLIN,
Clerk of Wolfe County Court.

51 STATE OF KENTUCKY, } *sct:*
County of Wolfe, }

I, David Hogg, clerk of the Wolfe county court, do hereby certify that the foregoing is a true copy of a deed and certificates to same from Daniel Breck to N. C. Morse, as shown by the records of the Wolfe county clerk's office.

[SEAL.] Given under my hand and official seal of office this 1st day of May, 1886.

DAVID HOGG, *Clerk.*

Plaintiffs offered and read evidence tending to show that L. Lane and wife conveyed to N. C. Morse, Sr., their interest in the land conveyed by Daniel Breck to N. C. Morse, trustee, by deed of September 13th, 1865; that C. F. Fechter and wife had conveyed their interest to B. Young; that B. Young and wife had conveyed same interest to N. C. Morse, Sr.; that C. W. Clayton had devised his interest therein to Mary A. Clayton by will; that said will had been duly probated and recorded in Cook county, Illinois, and that it and the record thereof had been destroyed at the great fire in Chicago in 1871; that Mary A. Clayton had conveyed the same interest to N. C. Morse, Sr.; that the deeds of said parties to said Morse, Sr., had been duly recorded in Breathitt county, Kentucky, where part of the lands conveyed therein lay, in August, 1873, and that they and the record thereof were destroyed by fire in the destruction of the clerk's office in said county in October.

On motion of defendants, the court excluded the evidence as to the contents of the will of C. W. Clayton; to which the plaintiffs excepted at the time and still except.

52 Plaintiffs introduced and read as evidence the record of the chancery court of Kenton county, Kentucky, in the case of Mary Z. Morse, adm'x of N. C. Morse, deceased, against Charles P. Morse *et al.*, marked E. Said record was and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, }
County of Kenton. }

Pleas before the honorable the chancery court for said county and State, at the court-house, in Covington, on the — day of ——, 187–; Hon. J. W. Menzies, judge.

MARY Z. MORSE, Adm'x of N. C. Morse, Plaintiff,
against
CHARLES P. MORSE, NATHAN C. MORSE, WM. O. Chenault & Belle Chenault, Sam'l F. B. Morse and Mattie W. Morse, Chambers, Stevens & Co., Jno. Shillito & Co., Blase & Nie, Defendants. } Equity. No. 2117

Be it remembered that on the 18th day of May, 1878, the plaintiffs filed their petition herein; which petition is as follows:

Kenton Chancery Court.

MARY Z. MORSE, Adm'z of N. C. Morse, Plaintiff,
against
CHARLES P. MORSE, NATHAN C. MORSE, WM. O. Chenault and Belle Chenault, Sam'l F. B. Morse and Mattie W. Morse, Chambers, Stevens & Co., John Shillito & Co., Blase & Nie, Defendants. } Petition in Equity.

53 The plaintiff says N. C. Morse, late of Kenton county, Kentucky, departed this life intestate, leaving the plaintiff his widow, and the defendant- Charles P. Morse, Nathan C. Morse, Belle Chenault, Samuel F. B. Morse, Sallie B. Morse, and Mattie W. Morse his only heirs-at-law, the la-t being minors, but over 14 years of age. The plaintiff has been appointed and qualified as administratrix upon the estate of the said decedent by appropriate orders of the Kenton county court, copies of which are filed herewith as part hereof. She says that Chambers, Stevens & Co., John Shillito & Co., Blase & Nie, and others unknown to her, and the plaintiff herself are creditors of the said decedent. The plaintiff says that on the — day of ——, —, by appropriate proceedings in the Kenton chancery court, she was invested by the judgment of said court with full power to act as *femme sole* and as such to make contracts. She further says that the said decedent left little or no personal estate, consisting of a small amount of household furniture and certain demands in the form of promissory notes of doubtful value, an inventory of which will in due time be filed herewith, but she says that said personal estate is wholly insufficient to pay his debts. Said household furniture was set apart to her as widow. He was the owner of several tracts of land in the counties of Powell, Menifee, and Pike, in the State of Kentucky, and also of lands in the State of Missouri, the title deeds to which will be produced and filed herein in due time. The title to said lands descended to the said heirs of the said N. C. Morse and in which the plaintiff is entitled to dower. The plaintiff prays that her accounts as administratrix may be settled and the said land, or so much thereof as may be necessary, be sold to pay the debts of the said decedent, subject to the plaintiff's dower right therein, and for the partition of the
54 remainder, if any, amongst the heirs, assigning to the plaintiff her dower interest therein.

She prays for a reference of this cause to the master commissioner of the court to hear proof of said estate and the claims of creditors and to report a settlement of her accounts and for all proper relief.

STEVENSON & O'HARA,
Att'ys for Plaintiffs.

KENTON COUNTY, *set:*

The plaintiff Mary Z. Morse says she believes the statements of the foregoing petition are true.

MARY Z. MORSE.

Sworn to before me by the plaintiff Mary Z. Morse this 17th day of May, 1878.

[SEAL.] WALTER CLEARY,
Notary Public.

Thereupon summons issued and was afterwards returned as follows:

The Commonwealth of Kentucky to the sheriff of Kenton county:

You are commanded to summon Charles P. Morse, Nathan C. Morse, and Samuel F. B. Morse to answer on the first day of the next June term of the Kenton chancery court a petition in equity filed against them and others in said court, at Covington, by Mary Z. Morse, administratrix of N. C. Morse, and warn them that upon failing to answer the petition will be taken for confessed or they will be proceeded against for contempt, and you will make due return of this summons on said first day of next June term of said court.

Witness H. Clay White, clerk of said court, this 18th day of May, 1878.

H. CLAY WHITE, *Clerk.*

55 Executed the within May 24th, 1878, on Charles P. Morse and Samuel F. B. Morse by giving to each of them a true copy hereof. Nathan C. Morse not found in my county.

J. F. LOWE, *S. K. C.*,
By G. D. COX, *D. C.*

Thereupon also summons issued and was afterwards returned as fol-ows:

The Commonwealth of Kentucky to the sheriff of Montgomery county:

You are commande- to summon William O. Chenault, Belle Chenault, Sallie B. Morse, and Mattie W. Morse to answer, on the first day of the next June term of the Kenton chancery court, a petition in equity filed against them and others in said court, at Covington, by Mary Z. Morse, administratrix of N. C. Morse, and warn them that upon failing to answer the petition will be taken for confessed or they will be proceeded against for contempt; and you will make due return of this summons on the first day of the next June term of this court.

Witness H. Clay White, clerk of said court, this 18th day of May, 1878.

H. CLAY WHITE, *Clerk*,
By MATT. H. CRAWFORD, *D. C.*

Executed May 22nd, 1878, on William O. Chenault, Belle Chenault, Sallie B. Morse, and Mattie W. Morse by delivering to each of them a true copy of the within summons.

J. R. TUCKER, *S. M. C.*

At a chancery court for said county and State on the 5th day of June, 1878, came L. E. Stevens and filed an answer herein. Said answer is as follows:

56 The defendants Chambers, Stevens and Company say that the decedent, N. C. Morse, in his lifetome was indebted to them in the sum of thirty dollars and seventy-three cents for goods sold and delivered to him at the agreed price of $30.73 and $0.40, costs of proof of claim, making the full sum of $31.15, no part of which has been paid. Amounts of the items composing said claim, with the affidavit and proof, are here filed, marked "#," as part hereof. They ask that it be referred to commissioner, together with other claims against said estate, and reported, and they join plaintiff in his prayer for sale of land to pay the same and his costs.

JOHN N. FURBER,
Att'y for Def't.

Kenton Chancery Court.

John N. Furber says he is attorney for defendants Levi E. Stephens, senior partner of the firm of Chambers, Stevens & Co., and he believes the statements contained in the above answer are true, and that said Stevens is absent from the State.

JOHN N. FURBER.

Sworn to before me by John N. Furber this 5th day of June, 1878.
CHAS. H. FISK, *N. P.*

Said claims are as follows:

CINCINNATI, *May*, 1878.

N. C. Morse to Chambers, Stevens & Co.

1877.		
June 25th.	To mdse., 60 ds.	24 53
" "	4 mos.	6 20
	Due by average Sept. 5th, '77	30 73
	Affidavit and claim	40
		$31 13

Received of C. P. Morse and heirs of N. C. Morse fifteen
57 $\frac{50}{100}$ dollars, in full of the above claim, Aug 15, '84.
$15.50. CHAMBERS, STEVENS & CO.,
Per WELLS STEVENS.

STATE OF OHIO, } ss:
Hamilton County, }

This day Levi E. Stevens, of the firm of Chambers, Stevens & Co., claimants of the account hereto attached against N. C. Morse's estate, amounting to $30.73, being first sworn, states that said demand is just and has never, to his knowledge or belief, been paid,

and tha- there is no offset or discount against the same or any usury embraced therein.

LEVI E. STEVENS.

Sworn to before me by Levi E. Stevens this 30th day of May, 1878.

JAMES D. HENRY,
N. P., Ham. Co., Ohio.

STATE OF OHIO, }
Hamilton County. }

The affiant, William Farnsworth, being first sworn, states that he is book-keeper for Chamber-, Stevens & Co., and that he has examined the account of Chambers, Stevens & Co. against the estate of N. C. Morse, deceased, hereto attached, amounting to $30.73, and that he knows the same is just and correct. He knows the goods therein charged were sold and delivered by said Chambers, Stevens & Co. to defendant, and the prices charged are the usual prices at which such goods were at the time sold.

WILLIAM FARNSWORTH.

Sworn to before me by William Farnsworth this 30th day of May, 1878.

JAMES D. HENRY,
N. P., Ham. Co., Ohio.

At the same court, on the same day, June 5th, 1878:

This cause is submitted for an order of reference. It ap-
58 pearing to the court that the plaintiff in this action is the statutory guardian for the infant defendants Samuel F. B. Morse, Sallie B. Morse, and Mattie W. Morse, it is ordered that R. Simmons, Esqr., be, and is hereby, appointed guardian *ad litem* for said infants, to defend them in this action.

At the same court, on the 10th day of June, 1878, the guardian *ad litem* filed his answer herein.

Said answer is as follows:

The defendants Samuel F. B. Morse, Sallie B. Morse, and Mattie W. Morse, by R. Simmons, their guardian *ad litem*, say they are infant children of N. C. Morse, deceased; that they have no knowledge personally of any indebtedness on the part of their father, N. C. Morse. They deny that he is indebted as charged in the petition or otherwise. They deny that there exists any necessity of selling real estate for the payment of debts or for any other purpose. They admit all the allegations of the petition which favors their interest and deny all that is against them or their interest. They ask the court to afford them all necessary protection as to the matters pertaining to this suit and all proper and full relief.

SAM'L F. B. MORSE,
SALLIE B. MORSE,
MATTIE W. MORSE,
By R. SIMMONS,
Their Guardian ad litem.

At the same court on June 14th, 1878:

This cause is referred to the master commissioner of this court, who will hear proof and report the real and personal estate left by the decedent, N. C. Morse, and what disposition has been
59 made thereof. He will hear proof of debts against the estate of decedent, and report all proof taken by him in writing and report all debts proven before him. He will also audit and state the account of the administratrix. He will report any liens on the estate or any part thereof. It is further ordered that all creditors of the said N. C. Morse are hereby enjoined and restrained from prosecuting suits against the administratrix for their debts and — required to file them in this cause.

At the same court, on the 9th day of Dec., 1878:

The master commissioner, F. P. Helm, filed his report of settlement in this cause, which is ordered to lie over until the 11th day of this term for exception.

Said report of settlement is as follows:

In pursuance of the order of reference herein at the June term, 1878, the master commissioner notified the creditors of the estate of N. C. Morse, deceased, by two (2) insertions of the "Commonwealth" newspaper, to come before him and prove their claims. Sundry claims have been presented to the master by the plaintiffs, with whom they were left by the said claimants, and the master has settled the accounts of the plaintiff Mary Z. Morse, her testimony herein being in writing and filed herewith. The master reports first a settlement of the administratrix' accounts.

DEBIT.

To amount of	inventory and appraisement		$6,691 35
" "	collected from Brigel Bros.		200 00
" "	Strotton's note		240 00
" "	collection, Gustav Tafel, att'y		32 00
Total			$7,163 35

59½ CREDIT.

By note of L. Lane	80 85	
By note Asa Stratton	460 00	
By note James McLemore	210 00	
By note Kuchmeister	1,730 50	
By note dated Sept. 21, '75. See invt.	605 00	
By seven notes, each $575. See invt.	3,605 00	
		6,691 35
To balance		$472 00

Additional credits of adm'x vouchers:

L.	By am't paid	A. D. Holden	138 31		
2.	" "	J. J. Younghams	120 00		
3.	" "	Mrs. B. A. Kennedy	59 11		
4.	" "	C. P. Morse, board	280 00		
%.	" "	" expenses	9 00		
6.	" "	J. L. Bristow, cl'k	2 95		
7.	" "	McGuffey Morrell	50 00		
8.	" "	funeral expenses	149 50		
9.	" "	W. M. Leathers	93 07		
10.	" "	Jno. B. Ewan	5 00		
11.	" "	M. Heermance	4 98		
12.	" "	Judge I. Halsey	53 00		
				964	92
	By balance due adm'x			$492	92

Statement of Claims Against the Estate of N. C. Morse, Dec'd.

Claim	1st. Chambers, Stevens & Co.	30	73
"	2nd. Dr. David Judkins	151	00
"	3rd. Jno. Shillito & Co.	23	01
	Total	$204	74

From the testimony it appears that N. C. Morse died seized of the following real estate, to wit: An undivided two-sevenths (2/7) interest in a tract of four thousand (4,000) acres of silver mining land at Thunder bay, in the province of Ontario, Canady; two farms of one hundred and sixty acres (160) *acres* each, in Washington and Shannon county, Missouri; also several large tracts of land lying in the counties of Breathitt, Lee, Menifee, Wolfe, Estill, and
60 Powell, in the State of Kentucky. The exact amount and interest in these tracts is not known.

There are no mortgages or liens upon any of these tracts, as shown by the proof.

FRANK P. HELM, *M. C.*

Said proof is as follows:

Deposition of Mary Z. Morse.

There was no personal estate left by N. C. Morse, deceased, except what is shown in the inventory filed herewith, all furniture and household articles being set apart to me as widow.

The debts due said N. C. Morse, as shown by said inventory, all of which were listed for distribution, were as follows:

1st.	L. Lane, note for	80 85
2nd.	Asa Stratton, note for	460 00
3d.	James McLernon	210 00
4th.	August Kerchmeister, notes secured by lien on real estate, five notes of 346.00 each	1,730 00
5th.	Do. mortgage notes	605 00
6th.	7th. Notes of same	3,605 00
		6,691 35

I have collected, as administratrix, on the Asa Stratton note shown above the sum of $240.00; also from Gustav Tafel, attorney for Mr. Morse, deceased, in the Kerchmeister matter, $32.00.

I have instructed my attorneys to institute suits of foreclosure on the Kerchmeister notes, but am not positive that it has been done. The collection of $240.00 was in full of the Asa Stratton note, as, owing to complications, my attorneys advised me to take that amount in full, which I did. The balance of $200.00, which I collected as administratrix from Brigel Bros. on account, is all, with the sums mentioned above, that have come to my hands as administratrix of N. C. Morse, deceased. I file herewith the notes and a copy of the mortgages referred to, as administratrix of N. C. Morse, dec'd.

61 I have paid debts against the estate aggregating $2,277.60, shown in detail by a statement I file herewith, marked M. Z. M. I also herewith file vouchers for each payment.

N. C. Morse, deceased, left real estate as follows:

A two-sevenths interest in a tract of land of four thousand (4,000) acres of silver mining land at Thunder bay, province of Ontario, Canada; two farms of 160 acres each in Sherman and Washington counties, Mo.; also several large tracts of land in the counties of Breathitt, Lee, Menifee, Wolfe, Estill, and Powell, State of Kentucky, but the exact amount it is not possible for me to tell, but I file the deeds for this property to said N. C. Morse, deceased, herewith, and from these can be seen the exact nature and character of the estate therein.

I know of no mortgages or liens upon any of this property; the whole thing is unproductive.

MARY Z. MORSE.

Attest. F. P. HELM, *M. C.*

Said statement marked M. Z. M. is as follows:

Statement of Debts.

Amount of money received.

Gustav Tafel	32 00
Brigel Bros., on account	200 00
Asa Stratton, notes sold for	240 00
Total	$472 00

The estate's indebtedness paid by the administratrix is as follows:

A. D. Holden (see vouchers)	138 00
Youghans, grocer	119 00
Mrs. Kennedy, milliner	59 11
Chas. P. Morse, board	280 00
" " expense to Hazelgreen	9 00
62 J. Bristow, clerk	2 95
McGuffy, Morrill and Strunk, att'ys	50 00
On ac't of funeral expenses	160 00
J. Evans, commissioner	5 00
Taxes at Frenchburg	6 85
Jones, for surveying	213 00
Charles Morse, in surveying	51 00
W. M. Leathers—see voucher	97 03
Int. on money borrowed by Mrs. Morse	440 00
Note to F. A. Prague, due Jan. 1st	265 00
Total	$1,897 29
Balance due administratrix	1,425 29
Amount bo*r*ight forward	1,429 25
Judge Halsey's expenses to Beattyville	40 00
David Morse, expenses	5 00
Judge Phelps, fees	4 75
Expenses of children as guardian rendered	695 60
" " since report was made	30 00
Judge Halsey's balance on expense ac't	13 00
Board for Sallie, Mattie, and Charlie, $20.00 per month, to November 1st	60 00
	$2,277 60

Report of Guardianship.

Mary Z. Morse, September 1st, 1878:

Sallie F. B. M. Morse, for board and clothing 14 months ending September 1st, 1878	$360 09
Mattie Morse, for board and clothing, schooling, &c. (see cash book to date)	335 51
Total	$695 60
Children indebted to guardian	695 60

At the same court on the 11th day of December, 1878:
"The master's report of settlement herein is now confirmed."

At the same court on the 13th day of December, 1878:
"Came Mary Z. Morse and W. E. Wade and filed their separate claims herein, which are referred to the master, and he will report at the next term of this court."

Said claim of Mary Z. Morse is as follows:

N. C. Morse Dr. to Mary Z. Morse.

63	1873, July 31.	To amount of money borrowed from Mary Z. Morse *from* said N. C. Morse and secured by mortgage upon the separate estate of M. Z. Morse	4,550 00
	1874, July.	Int. on same paid by M. Z. Morse	440 00
	1875, July.	Int. on same paid by M. Z. Morse	440 00
	1876, Sept.	Int. on same paid by M. Z. Morse	440 00
	1878, Sept.	Int. on same paid by M. Z. Morse	440 00
			$6,750 00
	1874, —.	To note of N. C. Morse, dated 1870, payable to Mrs. C. A. Withers, for $600.00, with 10% int., paid by Mrs. M. Z.	1,020 00
	March, 1884.	Borrowed money, $400.00; same, $250.00	650 00
			$8,420 00

STATE OF KENTUCKY, }
Montgomery County. }

The affiant, Mary Z. Morse, makes oath and says that the estate of N. C. Morse, dec'd, is indebted to her in the said several sums of money above set forth, with interest from their respective dates; that said demand is just; that it has never, to her knowledge or belief, been paid, and that there is no offset or discount against same or usury contained therein.

MARY Z. MORSE.

Sworn to before me by Mary Z. Morse this 12 day Dec'r, 1878.

GEO. E. MILLER,
Notary Public for Montgomery County, Kentucky.

The deed filed with the foregoing proof is as follows:

Thomas E. Bramlette, Esq., governor of the Commonwealth of Kentucky, to all whom these presents shall come, Greeting:

64 Know ye that by virtue and in consideration of 241 orders from the Pike county court there is granted by the said Commonwealth unto N. C. Morse, Benjamen Young, William H. Gallop, and Henry C. Sourds a certain tract or parcel of land containing 86,000 acres by survey bearing date the 29th day of August, one thousand eight hundred and sixty-five, lying and being in the county of Pike, on both sides of Elkhorn creek, and bounded as follows, to wit:

Beginning at a chestnut stump in the Sounding gap of the Cumberland mountain on the State line between Kentucky and Virginia,

thence running down the side of the mountain S. 45 W. 86 poles to a chestnut tree on the lower side of the road, thence N. 47 W. 42 poles to a cucumber, N. 75 W. 26 poles to a linn, S. 75 W. 76 poles to a black walnut on the lower side of said road, N. 80 W. 26 poles to a beech and cucumber, thence N. 40 E. 42 poles to a *bench to a* beech in a flat, thence N. 8 W. 20 poles to a spruce pine and dogwood on the bank of a branch of the said creek, thence north 1,000 poles to a stake, thence N. 53 E. 5,700 poles to a stake, thence south 1,500 poles to a stake, thence S. 53″ 30′ W. 5,249 poles to the beginning (excluding from the above boundary 36,000 acres, prior claim), with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said N. C. Morse, Benjamen Young, William H. Gallop, and Henry C. Sowards and their heirs forever.

In witness whereof the said Thomas E. Bramlette, Esqr., governor of the Commonwealth of Kentucky, hath hereunto set his hand and cause- the seal of the said Commonwealth to be affixed, at Frankfort, on the 10th day of Oct., in the year of our Lord one thousand eight hundred and sixty-six, and of the Commonwealth the seventy-fifth.

(Signed) THOS. E. BRAMLETTE.

By the governor:

(Signed) J. S. VAN WINKLE, *Sec't'y.*

A copy.

Attest: JOHN A. DAWSON, *R. L. O.*,

By RICH'D SHARP, *D. R.*

65 At a chancery court for said county and State, on the 26th day of February, 1879:

"The master commissioner filed his report on the claim herein." Said report is as follows:

Under the order herein at the special December term, 1878, the master reports the claims of W. E. Wade and Mary Z. Morse as follows.

W. E. Wade claim	2,950 00
Int., Nov. 28th, 1866, to Feb'y 25th, 1879	2,166 78
Total	$5,116 78
Mary Z. Morse, for money advanced to and paid for N. C. Morse	8,420 00
Total claims	$13,536 78

FRANK P. HELM, *M. C.*

At the same court, on the 28th day of February, 1879:

"The master's report on claims herein is now confirmed."

At a chancery court for said county and State, on the 20th day of June, 1879:

"This cause again referred to the master commissioner, who will enquire of and report a description of the land left by the decedent."

At a chancery court for said county and State, on the 22nd day of October, 1879:

"The master commissioner filed his report in this cause, which is ordered to lie over until the 7th day of the term for exceptions."

66 Said report is as follows:

Kenton Chancery Court.

N. C. MORSE'S ADM'X, Plaintiff,
against
N. C. MORSE'S HEIRS, &c., Defendants. } Report.

In pursuance of the order of reference herein at the June term, 1879, the master commissioner reports a description of the land left by decedent, the paper relating thereto having been furnished by the administratrix, as follows:

John Carnan survey of 20,510 acres: Beginning at letter A in the plat, a black oak standing in the south nine degree east line of a tract of land surveyed for P. D. Roberts, being 100 poles from the S. E. corner of said tract, thence north line W. (2,026¾) two thousand and twenty-six two-thirds poles to a B, a white oak tree; thence N. 81 E. sixteen hundred and twenty poles (1,620) to C, a sugar tree; *thence* S. nine degrees E. two thousand and twenty-six three-quarters poles to "D," a hickory; thence S. 81 degrees W. 1,620 poles to the beginning.

John Carnan survey of 29,823 acres: Beginning on the north side of Kentucky river at two sugar trees standing at the mouth of the north or left-hand fork of three forks as you go up the river, thence running down the river and bounding on the meanders thereof to a sugar tree and ash standing at the end of 1,620 poles from the beginning when reduced to a straight line; thence north 9 degrees west twenty-three hundred and eighty-two and one-third (2,382⅓) poles to a hickory; thence north 81 E. 1,600 poles to a black oak; thence south 1,800 poles to an entry made by Adam & Crow; thence binding with the said entry south 40 W. 380 poles, south 9 E. (360) three hundred and sixty poles; thence north 60 E. 240 poles to the beginning.

67 Samuel Young's survey of 30,973½ acres: Beginning at a black oak standing at the end of 440 poles in the N. 9 degree west line, drawn from the mouth of the north fork of the three forks of the Kentucky river, and running thence N. 9 W. 3,850 poles to a hickory, thence N. 81 E. 1,375 poles to a black oak, thence S. 9 E. 3,000 poles to letter D, in Kentucky river and a sugar tree near the mouth of a large branch; thence running down and binding with the meanders of the river to a buckeye at the end of 6,040

poles when reduced to a straight line, where it intersects with an entry made by Adams & Crow; thence binding on said entry N. 87 W. 240 poles, thence S. 40 E. 70 poles, thence S. 86 W. 180 poles, thence S. 40 E. 70 poles, thence S. 86 W. 180 poles, thence S. 77 W. 400 poles, south 40 W. 180 poles to the beginning.

John Carnan survey of 10,000 acres: Beginning at the letter "A," a hickory, being the N. W. corner of a tract of land of (30,373⅓) thirty thousand three hundred and seventy-three and one-third acres, surveyed for Samuel Young, and on a north 9 degree west line drawn from the mouth of the north fork of the three forks of the Kentucky river, thence N. 9 W. 1,166⅔ poles to a black oak; thence S. 81 E. 1,375 poles to "C," a black oak; thence S. 9 E. 1,166⅔ poles to a black oak; thence S. 81 W. 1,375 poles to the beginning.

Survey of the Thomas Franklin 116,656 acres: On an entry made the 17th day of July, 1784, by virtue of thirty-five Treasury warrants, Nos. 16,224, 16,226, 16,244, 16,245, 16,261, 18,400, 18,404, 18,421, 18,679, 18,711, 19,760, 19,761, 19,763, 19,765, 19,766, 19,767, 19,768, 19,769, 19,770, 19,771, 19,772, 19,773, 19,774, 19,775, 19,776, 19,778, 19,779, 19,780, 19,781, 19,782, 19,783, 19,784, 19,785, and 1,656 acres on a part of a Treasury warrant No. 19,786, lying and being in the county of Fayette, between the north and middle forks of the
68 River Kentucky. Beginning at three maple trees and one elm on the northerly side of the middle fork of Kentucky —, at its junction with the north fork, and running up the said middle fork and binding thereon as follows, viz: N. 39 E. 60 poles, N. 30 E. 44 poles, N. 89 E. 48 poles, N. 60 E. 56 poles, N. 60 E. 56 poles, N. 50 E. 50 poles, S. 29 E. 62 poles, S. 20 W. 80 poles, S. 34 E. 76 poles, S. 55 — 50 poles, S. 50 E. 70 poles, S. 78 E. 60 poles, S. 86 E. 86 poles, S. 81 E. 60 poles, S. 54 E. 40 poles, S. 63 E. 48 poles, S. 78 E. 72 poles, N. 65 E. 100 poles, N. 77 E. 120 poles, S. 47 E. 40 poles, S. 11 E. 100 poles, S. 40 E. 60 poles, S. 70 E. 20 poles, east 30 poles, N. 49 E. 26 poles, N. 28 W. 46 poles, N. 5 W. 50 poles, N. 25 W. 100 poles, N. 29 E. 140 poles, N. 60 E 100 poles, N. 69 E. 50 poles, S. 30 E. 102 poles, S. 74 E. 52 poles, S. 25 E. 60 poles, S. 14 W. 54 poles, S. 3 E. 46 poles, S. 15 E. 40 poles, S. 46 W. 46 poles, S. 15 W. 44 poles, S. 21 E. 68 poles, S. 48 E. 80 poles, S. 48 E. 80 poles, S. 41 E. 70 poles, S. 18 E. 60 poles, S. 15 W. 90 poles, S. 28 E. 86 poles, S. 41 E. 68 poles, S. 57 E. 100 poles, S. 5 E. 46 poles, S. 62 W. 90 poles, S. 45 W. 44 poles, S. 6 E. 84 poles, S. 33 E. 84 poles, S. 33 E. 80 poles, S. 6 W. 30 poles, S. 56 E. 36 poles, N. 74 E. 56 poles, due north 98 poles, N. 44 E. 50 poles, N. 24 E. 60 poles, N. 40 E. 50 poles, N. 26 E. 66 poles, N. 35 E. 80 poles, N. 32 E. 82 poles, S. 40 E. 32 poles, S. 13 W. 74 poles, S. 34 E. 96 poles, S. 70 E. 130 poles, N. 75 E. 130 poles, N. 85 E. 200 poles, S. 27 E. 60 poles, S. 15 E. 70 poles, S. 53 W. 42 poles, S. 10 E. 34 poles, S. 77 E. 60 poles, N. 76 E. 70 poles, S. 60 E. 30 poles, S. 14 E. 74 poles, S. 25 E. 48 poles, S. 2 — 84 poles, S. 16 E. 80 poles, S. 33 W. 78 poles, S. 68 W. 80 poles, S. 52 W. 80 poles, S. 40 W. 70 poles, S. 1 to 76 poles, S. 31 E. 40 poles, east 60 poles, N. 68 E. 64 poles, N. 49 E. 80 poles, N. 34 E. 100 poles, N. 83 E. 60 poles, S. 17 E. 90 poles, S. 28 E. 84 poles, east 40 poles, N. 77 E. 80 poles, N. 49 E. 48 poles, N. 47 E. 48 poles, N. 19 E.

95 poles, N. 24 E. 78 poles, S. 62 E. 50 poles, S. 19 W. 104 poles, S. 10 W. 46 poles, S. 3 W. 40 poles, S. 5 W. 132 poles, S. 50
69 W. 116 poles; thence S. 25 E. 52 poles, S. 37 E. 40 poles, N. 52 E. 200 poles, N. 64 E. 154 poles, S. 10 E. 140 poles, S. 24 E. 80 poles, S. 47 E. 42 poles, east 40 poles, N. 51 E. 80 poles, N. 75 E. 60 poles, S. 49 E. 46 poles, S. 12 E. 92 poles, S. 30 W. 148 poles, south 40 poles, S. 30 E. 146 poles, S. 80 E. 50 poles, east 45 poles, N. 84 E. 47 poles, S. 30 E. 52 poles, S. 35 W. 275 poles, S. 12 E. 40 poles, S. 74 E. 180 poles, S. 50 E. 40 poles, S. 62 E. 80 poles, S. 85 E. 80 poles, N. 75 E. 72 poles, S. 72 E. 40 poles, S. 28 E. 68 poles, S. 40 W. 140 poles, S. 65 W. 56 poles, N. 68 W. 100 poles, S. 63 W. 78 poles, S. 35 W. 68 poles, S. 16 W. 62 poles, S. 9 W. 48 poles, S. 19 E. 93 poles, N. 70 E. 109 poles, S. 84 E. 90 poles, S. 27 E. 65 poles, west 64 poles, S. 40 W. 50 poles, south 70 poles, S. 10 E. 20 poles, S. 35 W. 78 poles, S. 60 W. 90 poles, S. 52 W. 50 poles, S. 22 W. 40 poles, S. 25 E. 40 poles, S. 60 E. 36 poles, S. 71 E. 30 poles, east 100 poles, S. 30 east 36 poles, N. 42 E. 60 poles, S. 15 E. 40 poles, S. 50 W. 54 poles, N. 75 W. 40 poles, S. 60 W. 28 poles, S. 20 W. 20 poles, S. 76 poles, S. 25 W. 60 poles, S. 10 W. 30 poles, S. 7 E. 40 poles, S. 1 E. 140 poles, S. 16 W. 72 poles, S. 42 E. 60 poles, S. 70 E. 40 poles, N. 78 — 75 poles, S. 61 E. 50 poles, S. 14 W. 50 poles, S. 20 W. 44 poles, S. 11 W. 44 poles, S. 20 E. 94 poles, S. 46 E. 70 poles, S. 10 E. 60 poles, S. 22 W. 50 poles, S. 10 W. 44 poles, S. 11 E. 83 poles, S. 16 E. 70 poles, S. 37 E. 67 poles, S. 65 E. 80 poles, east 97 poles, N. 76 E. 114 poles, S. 11 E. 36 poles, S. 25 W. 54 poles, S. 8 E. 98 poles, S. 36 W. 64 poles, S. 48 W. 34 poles, N. 83 W. 64 poles, west 80 poles, N. 60 W. 52 poles, N. 16 W. 76 poles, N. 23 W. 80 poles, N. 64 W. 30 poles, S. 55 W. 26 poles, S. 17 W. 66 poles, due south 90 poles, S. 6 E. 80 poles, S. 46 E. 120 poles, S. 7 W. 80 poles, S. 57 E. 80 poles, east 38 poles, N. 47 E. 92 poles, S. 82 E. 80 poles, S. 5 W. 92 poles, S. 19 W. 110 poles, S. 12 W. 150 poles, S. 6 W. 132 poles, S. 10 E. 84 poles, S. 60 E. 70 poles, N. 70 E. 180 poles to a hickory, elm, and sugar tree, the elm marked F; thence N. 79 E. 120 poles to a black
70 oak; thence N. 40 E. 1,700 poles to three sycamores or butternut trees, marked F, in the southern side of the north fork of the River Kentucky; thence down the said fork and binding thereon as follows, viz: N. 52 W. 132 poles, N. 22 W. 58 poles, N. 64 E. 88 poles, N. 50 E. 50 poles, N. 8 E. 66 poles, N. 25 W. 80 poles, N. 20 W. 70 poles, N. 33 W. 76 poles, N. 88 W. 60 poles, S. 61 W. 90 poles, S. 84 W. 50 poles, N. 30 W. 50 poles, N. 54 E. 296 poles, N. 5 W. 26 poles, N. 41 W. 20 poles, N. 80 W. 80 poles, N. 35 W. 34 poles, N. 33 E. 52 poles, N. 69 E. 80 poles, N. 53 E. 24 poles, N. 33 E. 40 poles, N. 20 E. 38 poles, N. 3 W. 80 poles, N. 45 E. 192 poles, N. 30 E. 40 poles, N. 28 — 48 poles, N. 28 W. 48 poles, N. 70 W. 24 poles, S. 70 W. 200 poles, N. 68 W. 40 poles, N. 15 W. 56 poles, N. 51 E. 126 poles, N. 18 E. 38 poles, N. 3 W. 32 poles, N. 55 W. 100 poles, N. 30 W. 60 poles, N. 47 E. 64 poles, N. 30 E. 50 poles, N. 17 W. 54 poles, N. 17 W. 54 poles, N. 12 E. 50 poles, N. 9 W. 48 poles, N. 45 E. 50 poles, N. 85 E. 100 poles, N. 78 E. 82 poles, N. 60 E. 70 poles, N. 26 E. 60 poles, N. 10 E. 40 poles, N. 54 W. 50 poles, S. 80 W. 40 poles, S. 52 W. 150 poles, S. 70 W. 102 poles, N. 45 W. 62 poles, N. 7 W. 66 poles, N. 24 W. 120 poles, N. 60 E. 68 poles, N. 87 E. 162 poles, N. 60 E. 38

poles, N. 26 W. 36 poles, N. 57 W. 40 poles, N. 75 W. 88 poles, N. 47 W. 120 poles, N. 20 W. 86 poles, N. 26 W. 130 poles, N. 15 E. 108 poles, N. 34 E. 94 poles, N. 59 E. 100 poles, S. 67 E. 90 poles, S. 75 E. 64 poles, N. 68 E. 60 poles, N. 44 E. 50 poles, N. 9 W. 37 poles, N. 85 W. 128 poles, N. 10 W. 30 poles, N. 41 E. 160 poles, S. 68 E. 85 poles, N. 81 E. 120 poles, N. 42 E. 74 poles, N. 8 E. 120 poles, S. 9 W. 52 poles, N. 65 W. 40 poles, S. 74 W. 160 poles, N. 55 W. 60 poles, N. 16 W. 72 poles, N. 23 E. 40 poles, N. 54 E. 180 poles, N. 42 E. 152 poles, N. 33 E. 30 poles, N. 20 E. 40 poles, N. 35 W. 40 poles, N. 87 W. 118 poles, N. 55 W. 86 poles, N. 40 W. 88 poles, north 48 poles, N. 18 E. 94 poles, N. 45 E. 140 poles, N. 57 E. 78 poles, N. 35 W. 86 poles, N. 60 W. 70 poles,
71 S. 59 W. 60 poles, S. 20 W. 50 poles, S. 15 W. 74 poles, S. 48 W. 54 poles, N. 70 W. 122 poles, N. 16 W. 300 poles, N. 26 W. 90 poles, north 51 W. 130 poles, N. 75 W. 160 poles, N. 84 W. 65 poles, N. 36 W. 77 poles, N. 36 E. 82 poles, N. 70 E. 32 poles, E. 200 poles, N. 55 E. 96 poles, N. 80 poles, N. 12 W. 76 poles, N. 28 W. 150 poles, N. 45 W. 70 poles, S. 72 W. 48 poles, S. 40 W. 100 poles, S. 21 W. 90 poles, S. 10 W. 144 poles, S. 34 W. 80 poles, S. 67 W. 134 poles, N. 72 W. 64 poles, N. 59 W. 70 poles, N. 35 W. 32 poles, N. 13 W. 290 poles, N. 26 W. 120 poles, N. 10 E. 92 poles, N. 55 E. 62 poles, S. 81 E. 190 poles, N. 73 E. 40 poles, N. 32 E. 60 poles, N. 49 W. 96 poles, N. 75 W. 164 poles, west 120 poles, N. 85 W. 82 poles, N. 73 W. 80 poles, N. 85 W. 60 poles, S. 65 W. 70 poles, S. 30 W. 80 poles, S. 6 W. 95 poles, S. 10 E. 250 poles, S. 17 W. 99 poles, S. 65 W. 68 poles, N. 18 W. 180 poles, N. 8. W. 68 poles, N. 24 E. 86 poles, N. 10 E. 82 poles, N. 19 W. 60 poles, north 80 poles, N. 17 E. 90 poles, N. 10 W. 38 poles, N. 45 W. 46 poles, west 82 poles, S. 50 W. 68 poles, S. 72 W. 40 poles, N. 87 W. 300 poles. N. 72 W. 138 poles, S. 73 W. 64 poles, S. 57 W. 185 poles, N. 75 W. 115 poles, N. 20 W. 95 poles, N. 40 E. 56 poles, N. 64 E. 369 poles, N. 45 E 159 poles, N. 26 E. 114 poles, N. 26 W. 60 poles, N. 75 W. 52 poles, S. 60 W. 48 poles, S. 37 W. 80 poles, S. 66 W. 16 poles, S. 72 W. 124 poles, S. 65 W. 100 poles, S. 35 W. 128 poles, S. 67 W. 56 poles, N. 40 W. 24 poles, N. 25 W. 93 poles, N. 35 W. 37 poles, N. 85 W. 58 poles, N. 25 W. 78 poles, N. 5 W. 140 poles, N. 35 E. 68 poles, N. 5 E. 30 poles, N. 15 W. 44 poles, N. 25 W. 56 poles, N. 73 W. 50 poles, S. 30 W. 184 poles, S. 20 W. 96 poles, S. 10 W. 250 poles, S. 51 W. 86 poles, N. 73 W. 96 poles, N. 17 W. 100 poles, N. 31 E. 112 poles, N. 5 E. 68 poles, N. 25 W. 92 poles, N. 8 E. 106 poles, N. 45 E. 62 poles, N. 15 E. 70 poles, N. 48 W. 38 poles, S. 72 W. 60 poles, N. 82 W. 40 poles, S. 83 W. 72 poles, S. 50 W. 88 poles, S. 35 W. 50 poles,
72 S. 11 W. 123 poles, S. 54 W. 51 poles, S. 87 W. 220 poles, N. 29 W. 140 poles, N. 51 W. 50 poles, N. 82 W. 40 poles, S. 73 W. 50 poles, S. 60 W. 44 poles, S. 35 W. 40 poles, S. 13 W. 80 poles, S. 45 W. 94 poles, S. 81 W. 70 poles, S. 65 W. 34 poles, S. 50 W. 104 poles, N. 58 W. 36 poles, N. 10 E. 62 poles, N. 33 E. 81 poles, N. 23 E. 109 poles, N. 38 E. 68 poles, N. 13 E. 60 poles, N. 26 W. 104 poles, N. 10 E. 80 poles, N. 40 E. 100 poles, N. 27 E. 52 poles, N. 3 E. 36 poles, N. 65 W. 94 poles, S. 66 W. 140 poles, S. 60 W. 230 poles, S. 56 W. 116 poles, S. 76 W. 130 poles, S. 56 W. 110 poles, N. 88 W. 240 poles,

S. 45 W. 86 poles, south 122 poles, S. 20 W. 62 poles, S. 43 E. 130 poles, S. 32 E. 94 poles, south 310 poles, S. 11 W. 134 poles, S. 21 W. 180 poles, S. 25 W. 142 poles, S. 35 W. 120 poles, S. 65 W. 81 poles, N. 80 W. 73 poles, N. 25 W. 60 poles, N. 12 E. 52 poles, N. 16 W. 60 poles, N. 56 W. 56 poles, S. 64 W. 189 poles, S. 56 W. 137 poles, S. 64 W. 114 poles, S. 57 W. 96 poles, S. 20 W. 114 poles; thence S. 29 E. 64 poles to the place of beginning, being the interest of the decedent, N. C. Morse, in the tract of land above described.

FRANK P. HELM, *M. C.*

At the same court, on the 27th day of October, 1879:

The master commissioner's report in this cause is now confirmed and these causes are submitted for an order of sale.

At the same court, on the 5th day of November, 1879:

This cause has been submitted for an order of sale for the entire real estate described in the master's report filed herein October 22nd, 1879. It appears from the proof adduced to the court that the personal property is insufficient to pay the debts of said estate,
73 and that a sale of the entire property will be for the best interest of all the parties in interest, and especially of the infant defendants. It is therefor- now ordered and adjudged that Frank P. Helm, master commissioner of this court, on a day to be fixed by him, sell publicly to the highest and best bidder or bidders, at the door of the court-house of Kenton county, in the city of Covington, on the following terms, one-half in six and one-half in twelve months, the following-described real estate, to wit, being the entire interest of said N. C. Morse, deceased, in and to the following-described real estate, to wit: John Carnan's survey of 20,510 acres: Beginning at letter "a" in the plat, a black oak standing in the south nine degrees east line of a tract of land surveyed for P. D. Roberts, being one hundred poles from the southeast corner of said tract, thence north nine degrees west two thousand and twenty-six and three-fourth poles (2,026¾) to "B," a white oak; thence north eighty-one degrees east sixteen hundred and twenty (1,620) poles to "c," a sugar tree; thence south nine degrees east two thousand and twenty-six and three-fourths poles to "D," a hickory; thence south eighty-one degrees west sixteen hundred and twenty poles to the beginning.

John Carnan's survey of 29,823 acres: Beginning on the north side of Kentucky river, two sugar trees and a buckeye standing at the mouth of the — or left-hand fork of three forks as you go up the river, thence running down the river and binding on the meanders thereof to a sugar tree and ash standing at the end of sixteen hundred and twenty poles from the beginning when reduced to a straight line; thence north nine degrees west twenty-three hundred and eighty-two and one-third poles (2,382⅓) to a hickory; thence eighty-one degrees east sixteen hundred poles to a black oak; thence south nine degrees east eighteen hundred poles to an entry made
74 by Adams & Crow; thence binding with the said entry south forty degrees west three hundred and eighty poles, south

nine degrees east three hundred and sixteen poles; thence north sixty degrees east two hundred and forty poles to the beginning.

Samuel Young's survey, 30,973½ acres: Beginning at a black oak standing at the end of 440 poles on the W. 90 degree W. line drawn from the north of the north fork of the three forks of the Kentucky river, and running thence N. 9 W. 3,850 poles to a hickory; thence N. 80 E. 1,375 poles to a black oak; thence S. 9 E. 3,000 poles to letter "D," in Kentucky river, at a sugar tree near the mouth of a large branch; thence running down and binding with the meanders of the river to a buckeye at the end of 640 poles when reduced to a straight line, where it intersects with an entry made by Adams and Crow; thence binding by said entry N. 87 W. 240 poles; thence S. 40 E. 70 poles; thence S. 86 W. 180 poles; thence S. 77 W. 400 poles, S. 40 W. 180 poles to the beginning.

John Carnan's survey, 10,000 acres:

Beginning at the *little* "a," a hickory, being the northwest corner of a tract of land of (30,373⅓) thirty thousand three hundred and seventy-three and one-third acres surveyed for Samuel Young, and on a N. 9 W. line drawn from the mouth of the north fork of the three forks of the Kentucky river, thence N. 9 W. 1,166⅔ poles to a black oak; thence N. 81 E. 1,375 poles to a letter "C," a black oak; thence S. 9 E. 1,166⅔ poles to a black oak; thence S. 81 W. 1,375 poles to the beginning.

Survey for Thomas Franklin, 116,656 acres:

On an entry made the 17th day of July, 1874, by virtue of thirty-five Treasury warrants, Nos. 16,224, 16,226, 16,244, 16,245, 16,261, 16,262, 18,400, 18,404, 18,421, 18,699, 18,711, 19,760, 19,761, 19,763, 19,765, 19,766, 19,767, 19,768, 19,769, 19,770, 19,771, 19,772, 19,773, 19,774, 19,775, 19,776, 19,777, 19,778, 19,779, 19,780, 19,781,
75 19,782, 19,783, 19,784, 19,785, and sixteen hundred and fifty-six acres on part of a Treasury warrant 19,786, lying and being in the county of Fayette, between the north and middle forks of the River Kentucky: Beginning at three maple trees and one elm on the northerly side of the middle fork of Kentucky river at its junction with the north fork, and running up said middle fork and binding thereon as follows, viz: N. 35 E. 60 poles, N. 30 E. 44 poles, W. 89 E. 48 poles, N. 60 E. 56 poles, N. 50 E. 50 poles, S. 29 E 62 poles, S. 20 W. 80 poles, S. 34 E. 76 poles, S. 55 E. 50 poles, S. 50 E. 70 poles, S. 78 E. 60 poles, S. 86 E. 86 poles, S. 81 E. 60 poles, S. 54 E. 40 poles, S. 63 E. 48 poles, S. 78 E. 72 poles, N. 65 E. 100 poles, N. 77 E. 120 poles, S. 47 E. 40 poles, S. 11 E. 100 poles, S. 40 E. 60 poles, S. 70 E. 20 poles, east 30 poles, N. 49. E. 26 poles, N. 28 W. 46 poles, N. 5 W. 50 poles, N. 25 W. 100 poles, N. 29 E. 140 poles, N. 60 E. 100 poles, N. 69 E. 50 poles, S. 30 E. 102 poles, S. 74 E. 52 poles, S. 25 E. 60 poles, S. 40 W. 54 poles, S. 3 E. 46 poles, S. 15 E. 40 poles, S. 46 W. 46 poles, S. 15 W. 44 poles, S. 2 E. 40 poles, S. 21 E. 68 poles, S. 48 E. 80 poles, S. 41 E. 70 poles, S. 18 E. 60 poles, S. 15 W. 90 poles, S. 28 E. 86 poles, S. 41 E. 68 poles, S. 57 E. 100 poles, S. 5 E. 46 poles, S. 62 W. 90 poles, S. 45 W. 44 poles, S. 6 E. 84 poles,

S. 33 E. 80 poles, S. 6 W. 30 poles, S. 56 E. 36 poles, W. 74 E. 56 poles, due north 98 poles, W. 44 E. 50 poles, N. 24 E. 60 poles, N. 40 E. 50 poles, N. 26 E. 66 poles, N. 35 E. 80 poles, W. 82 E. 82 poles, S. 40 E. 32 poles, S. 13 W. 74 poles, S. 34 E. 96 poles, S. 70 E. 130 poles, W. 75 E. 136 poles, N. 85 E. 200 poles, S. 27 E. 60 poles, S. 17 E. 70 poles, S. 53 W. 42 poles, S. 10 E. 34 poles, S. 77 E. 60 poles, W. 76 E. 70 poles, S. 60 E. 30 poles, S. 14 E. 74 poles, S. 25 E. 48 poles, S. 2 E. 84 poles, S. 16 E. 80 poles, S. 33 W. 78 poles, S. 68 W. 80 poles, S. 52 W. 80 poles, S. 40 W. 70 poles, S. 1 W. 76 poles, S. 31 E. 40 poles, east 60 poles, N. 68 E. 64 poles, W. 49 E. 80 poles, W. 34 E. 100 poles, W. 83 E. 60 poles, S. 17 E. 90 poles, S. 28 E. 84 poles, east 40 poles, W. 77 E. 80, N. 47 E. 48 poles, N. 19 E. 95 poles,
76 N. 24 E. 78 poles, S. 62 E. 50 poles, S. 19 W. 104 poles, S. 10 W. 46 poles, S. 3 W. 40 poles, S. 5 W. 132 poles, S. 50 W. 116 poles, S. 25 E. 52 poles, S. 37 E. 40 poles, N. 52 E. 200 poles, N. 64 E. 154 poles, S. 10 E. 140 poles, S. 24 E. 80 poles, S. 47 E. 42 poles, east 40 poles, W. 51 E. 80 poles, N. 75 E. 60 poles, S. 49 E. 46 poles, S. 12 E. 92 poles, S. 30 W. 148 poles, south 40 poles, S. 30 E. 146 poles, S. 80 E. 50 poles, east 45 poles, N. 84 E. 47 poles, S. 30 E. 52 poles, S. 35 W. 275 poles, S. 12 E. 40 poles, S. 74 E. 180 poles, S. 50 E. 40 poles, S. 62 E. 80 poles, S. 85 E. 80 poles, N. 75 E. 72 poles, S. 72 E. 40 poles, S. 28 E. 68 poles, S. 40 W. 140 poles, S. 65 W. 56 poles, N. 68 W. 100 poles, S. 63 W. 78 poles, S. 35 W. 68 poles, S. 62 W. 62 poles, S. 90 W. 48 poles, S. 19 E. 93 poles, N. 70 E. 109 poles, S. 84 E. 90 poles, S. 27 E. 65 poles, west 64 poles, S. 40 W. 50 poles, south 70 poles, S. 10 E. 20 poles, S. 35 W. 78 poles, S. 60 W. 90 poles, S. 52 W. 50 poles, S. 22 W. 40 poles, S. 25 E. 40 poles, S. 60 E. 36 poles, S. 71 E. 30 poles, east 100 poles, S. 30 east 36 poles, W. 42 E. 60 poles, S. 15 E. 40 poles, S. 50 W. 54 poles, W. 75 W. 40 poles, S. 60 W. 28 poles, S. 20 W. 20 poles, S. 76 poles, S. 25 W. 60 poles, S. 10 W. 30 poles, S. 7 E. 40 poles, S. 1 E. 140 poles, S. 16 W. 72 poles, S. 42 E. 60 poles, S. 70 E. 40 poles, N. 78 — 75 poles, S. 61 E. 50 poles, S. 14 W. 50 poles, S. 20 W. 44 poles, S. 11 W. 44 poles, S. 20 E. 94 poles, S. 46 E. 70 poles, S. 10 E. 60 poles, S. 22 W. 50 poles, S. 10 W. 44 poles, S. 11 E. 83 poles, S. 16 E. 70 poles, S. 37 E. 67 poles, S. 65 E. 80 poles, east 97 poles, N. 76 E. 114 poles, S. 11 E. 36 poles, S. 25 E. 54 poles, S. 8 E. 98 poles, S. 36 W. 64 poles, S. 40 W. 34 poles, N. 83 W. 64 poles, west 80 poles, N. 60 W. 52 poles, N. 16 W. 76 poles, N. 23 W. 80 poles, N. 64 W. 30 poles, N. 80 W. 30 poles, S. 55 W. 26 poles, S. 17 W. 66 poles, south 90 poles, S. 6 E. 80 poles, S. 46 E. 120 poles, S. 7 W. 80 poles, S. 57 E. 80 poles, east 38 poles, N. 47 E. 92 poles, S. 82 E. 80 poles, S. 5 W. 92 poles, S. 19 W. 110 poles, S. 12 W. 150 poles, S. 5 W. 132 poles, S. 10 E. 84 poles, S. 60 E. 70 poles, N. 70 E. 180 poles to a hickory, elm, and sugar tree, the elm marked F; thence N.
77 79 E. 1-0 poles to black oaks; thence N. 40 E. 1,700 poles to three sycamores or buttonwood trees, marked (F), on the southern side of the north fork of the River Kentucky, thence down the said fork and binding thereon as follows, viz: N. 52 W. 132 poles, N. 22 W. 58 poles, N. 64 E. 88 poles, N. 50 E. 50 poles, N. 83 — 66 poles, N. 25 W. 80 poles, N. 20 W. 70 poles, west 33 W. 76 poles, N. 88 W. 60 poles, S. 61 W. 90 poles, S. 84

W. 50 poles, W. 30 W. 50 poles, W. 54 E. 296 poles, N. 5 W. 26 poles N. 41 W. 20 poles, N. 80 W. 80 poles, N. 35 W. 34 poles, west 33 E. 52 poles, N. 69 E. 80 poles, N. 53 E. 24 poles, N. 33 E. 40 poles, N. 20 E. 38 poles, N. 3 W. 80 poles, N. 45 E. 192 poles, W. 30 E. 40 poles, N. 38 W. 48 poles, N. 70 W. 24 poles, S. 72 W. 200 poles, N. 68 W. 40 poles, W. 15 W. 56 poles, W. 51 E. 136 poles, N. 18 E. 38 poles, N. 3 W. 32 poles, N. 55 W. 100 poles, N. 30 W. 60 poles, N. 47 E. 64 poles, N. 30 E. 50 poles, N. 17 W. 54 poles, N. 12 E. 50 poles, N. 9 W. 48 poles, N. 45 E. 50 poles, N. 85 E. 100 poles, N. 78 E. 82 poles, N. 60 E. 70 poles, N. 26 E. 60 poles, N. 10 E. 40 poles, N. 54 W. 50 poles, S. 80 W. 40 poles, S. 52 W. 150 poles, S. 70 W. 102 poles, N. 45 W. 62 poles, N. 7 W. 66 poles, N. 24 W. 120 poles, N. 60 E. 68 poles, N. 87 E. 162 poles, N. 60 E. 38 poles, N. 26 W. 36 poles, N. 57 W. 40 poles, N. 75 W. 88 poles, N. 47 W. 120 poles, N. 20 W. 86 poles, N. 26 W. 130 poles, N. 15 E. 108 poles, N. 34 E. 94 poles, N. 59 E. 100 poles, S. 67 E. 90 poles, S. 75 E. 64 poles, N. 68 E. 60 poles, N. 44 E. 50 poles, N. 90 W. 37 poles, N. 85 W. 128 poles, N. 10 W. 30 poles, N. 41 E. 160 poles, S. 68 E. 85 poles, N. 87 E. 120 poles, N. 42 E. 72 poles, N. 8 E. 120 poles, S. 9 W. 52 poles, N. 65 W. 40 poles, S. 74 W. 160 poles, N. 55 W. 60 poles, N. 16 W. 72 poles, N. 22 E. 40 poles, N. 54 E. 108 poles, N. 42 E. 152 poles, N. 33 E. 30 poles, N. 23 E. 40 poles, N. 35 W. 40 poles, N. 87 W. 118 poles, N. 55 W. 86 poles, N. 40 W. 88 poles, N. 48 poles, N. 18 E. 94 poles, N. 45 E. 140 poles, N. 57 E. 78 poles, N. 35 W. 86 poles, N. 60 W. 70 poles,
78 S. 59 W. 60 poles, S. 20 W. 50 poles, S. 15 W. 74 poles, S. 48 W. 54 poles, N. 70 W. 122 poles, N. 16 W. 300 poles, N. 20 W. 90 poles, N. 51 W. 130 poles, N. 75 W. 160 poles, N. 84 W. 65 poles, N. 36 W. 77 poles, N. 36 E. 82 poles, N. 70 E. 32 poles, east 200 poles, N. 55 E. 96 poles, north 80 poles, N. 12 W. 76 poles, N. 28 W. 150 poles, N. 45 W. 70 poles, S. 72 W. 48 poles, S. 40 W. 100 poles, S. 21 W. 90 poles, S. 10 W. 144 poles, S. 33 W. 80 poles, S. 67 W. 134 poles, N. 72 W. 64 poles, N. 59 W. 70 poles, N. 35 W. 32 poles, N. 13 W. 290 poles, N. 26 W. 120 poles, N. 10 E. 92 poles, N. 55 E. 62 poles, S. 84 E. 190 poles, N. 73 E. 40 poles, N. 32 E. 60 poles, N. 49 W. 96 poles, N. 75 W. 164 poles, west 120 poles, N. 85 W. 82 poles, N. 73 W. 80 poles, N. 85 W. 60 poles, S. 65 W. 70 poles, S. 30 W. 80 poles, S. 6 W. 95 poles, S. 10 E. 250 poles, S. 17 W. 99 poles, S. 65 W. 68 poles, N. 18 W. 180 poles, N. S. W. 68 poles, N. 24 E. 86 poles, N. 10 E. 82 poles, N. 19 W. 60 poles, north 80 poles, N. 17 E. 90 poles, N. 10 W. 38 poles, N. 45 W. 46 poles, west 82 poles, S. 50 W. 68 poles, S. 72 W. 40 poles, N. 87 W. 300 poles, N. 72 W. 138 poles, S. 73 W. 64 poles, S. 57 W. 185 poles, N. 75 W. 115 poles, N. 20 W. 95 poles, N. 40 E. 56 poles, N. 64 E. 369 poles, N. 45 E. 159 poles, N. 26 E. 114 poles, N. 26 W., 60 poles, N. 75 W. 52 poles, S. 60 W. 48 poles, S. 37 W. 100 poles, S. 35 W. 128 poles, S. 67 W. 56 poles, N. 40 W. 24 poles, N. 25 W. 93 poles, N. 35 W. 37 poles, N. 85 W. 58 poles, N. 25 W. 70 poles, N. 5 W. 140 poles, N. 35 E. 68 poles, N. 5 E. 30 poles, N. 15 W. 44 poles, N. 25 W. 56 poles, N. 73 W. 50 poles, S. 30 W. 184 poles, S. 20 W. 96 poles, S. 10 W. 250 poles, S. 51 W. 86 poles, N. 73 W. 96 poles, N. 17 W. 100 poles, N. 31 E. 112 poles, N. 5 E. 68 poles, N. 25

W. 92 poles, N. 8 E. 106 poles, N. 45 E. 62 poles, N. 15 E. 70 poles, N. 48 W. 38 poles, S. 72 W. 60 poles, N. 82 W. 40 poles, S. 83 W. 72 poles, S. 50 W. 88 poles, S. 35 W. 60 poles, S. 11 W. 123 poles, S. 54 W. 51 poles, S. 87 W. 220 poles, N. 29 W. 140 poles, N. 51 W. 50 poles, N. 82 W. 40 poles, S. 73 W. 50 poles, S.
79 60 W. 44 poles, S. 35 W. 40 poles, S. 13 W. 80 poles, S. 45 W. 49 poles, S. 81 W. 70 poles, S. 65 W. 34 poles, S. 51 W. 104 poles, N. 58 W. 36 poles, N. 10 E. 62 poles, N. 33 E. 81 poles, N. 23 E. 109 poles, N. 38 E. 68 poles, N. 13 E. 60 poles, N. 26 W. 104 poles, N. 10 E. 80 poles, N. 40 E. 100 poles, N. 27 E. 52 poles, N. 30 E. 36 poles, N. 65 W. 94 poles, S. 66 W. 140 poles, S. 60 W. 230 poles, S. 56 W. 113 poles, S. 76 W. 130 poles, S. 56 W. 110 poles, N. 88 W. 240 poles, S. 45 W. 86 poles, S. 122 poles, S. 20 W. 62 poles, S. 43 E. 130 poles, S. 32 E. 94 poles, S. 310 poles, S. 11 W. 134 poles, S. 21 W. 180 poles, S. 25 W. 142 poles, S. 35 W. 120 poles, S. 65 W. 81 poles, N. 80 W. 73 poles, N. 25 W. 60 poles, N. 12 E. 52 poles, N. 16 W. 60 poles, N. 56 W. 56 poles, S. 64 W. 189 poles, S. 56 W. 137 poles, S. 64 W. 114 poles, S. 57 W. 96 poles, S. 20 W. 114 poles, S. 29 E. 64 poles to the place of beginning, being the interest of the decedent, N. C. Morse, in a tract of land above described. The said commissioner will advertise time, place, and terms of sale for eight days. He will take bond of the purchaser, with good security, payable to himself and to bear interest from the day of sale. He will report under this order.

At a chancery court for said county and State, on the 4th day of February, 1880:

"This cause coming on to be heard on plaintiff's motion for a re-reference to the master for the purpose of ascertaining the amount of the preferred debts of the estate of the said decedent which have been paid by said administratrix and the same being fully considered by the court, it is ordered that the accounts of said administratrix be referred to Frank P. Helm, Esqr., master commissioner of this court, who will examine the same and report to this court at the present term hereof the amount of such preferred claims so paid by said administratrix.

80 At the same court, on the 11th day of February, 1880:

The master commissioner, F. P. Helm, filed a report in this cause, which is ordered to lie over until the 13th day of this term for exceptions.

Said report is as follows:

Kenton Chancery Court.

N. C. Morse's Adm'x, Plaintiff,
vs.
N. C. Morse's Heirs, &c., Defendant. } Report of Settlement.

In pursuance of the order of reference herein at the February term, 1880, the master reports the following claims as preferred claims in favor of the administratrix:

March 4 & 5.	N. C. Morse's expenses to Hazelgreen on acc't of the estate		9 00
" 6.	J. L. Bristow's fees, county clerk		2 95
" 7.	McGuffy, Morrill & Smith, att'ys		50 00
" 8.	Smith & Rose, undertakers		160 00
" 4 & 5.	C. P. Morse's expenses to Hazelgreen, Campton, Beattyville, Frenchburg, &c.		280 00
10.	J. Ewan, fees, J. P., K. C.		5 00
	Taxes, Frenchburg		6 85
	W. W. Jones, John Carnan survey		213 60
" 4 & 5.	C. P. Morse's expenses with said Jones		51 00
" 12.	Judge Halsey's expenses to Beattyville		53 00
	David Morse, for estate		5 00
	Judge Phelps, fees		4 75
	Jones' expenses to show parties		25 00
	Fees in the U. S. court, Kerchmeister case		$870 20

FRANK P. HELM, *M. C.*

At the same court, on the 16th day of February, 1880:

"The master commissioner's report in this cause is now confirmed."

At a chancery court for said county and State, on the 25th day of February, 1880:

"The master commissioner filed his report in this cause,
81 which is ordered to lie over until the 1st day of March, 1880, for exceptions."

Said report is as follows:

"In pursuance of the order of sale and judgment rendered herein at the October term, 1879, the master commissioner duly advertised the time, place, and terms of said sale by four (4) written advertisements, put up as follows: One at the court-house door, one at the corner of Fifth and Scott streets, one at the Seventh-street market-house, and one at the Eleventh-street market-house, in the city of Covington, Kentucky, and on the 19th day of February, 1880 (the property having been advertised for eight days, as directed by the judgment herein), exposed at public vendue, as decreed, at the court-house door, in the city of Covington, Kentucky, the property described in the pleadings and in the judgment, first having had the same appraised, under oath, by two disinterested, intelligent housekeepers of Kenton county, Ky., not related to any party to this action. Said appraisement is in writing and filed herewith as part hereof: The interest of N. C. Morse, deceased, in John Carnan's survey of 20,510 acres; also his interest in John Carnan's survey of 29,823 acres; also his interest in John Carnan's survey of 10,000 acres; also his interest in Samuel Young's survey of 30,973½ acres; also his interest in Thomas Franklin's survey of 110,656 acres, all of said land lying on and adjacent to the Kentucky river, in the Sta-e of Kentucky. The master first offered the interest of N. C. Morse, deceased,

in the above several described tract- of land separately, and receiving no bid therefor when so offered, he then offered the interest of N. C. Morse in the several tracts of land described above as an entirety and Charles Evans bid therefor $1,001.00, and no one making any better bid therefor and the said Charles Evans being
82 the highest and best bidder, the interest of said Morse in the said tracts of land was publicly struck off to him at that bid for $1,001.00. The purchaser has executed no s-le bond. The interest of N. C. Morse, deceased, in said lands was valued by the said appraisers, T. F. Hallam and F. A. Prague, as follows:

In the first tract at	$300 00
In the second tract at	300 00
In the third tract at	150 00
In the fourth tract at	350 00
In the fifth tract at	400 00

FRANK P. HELM, *M. C.*

Said appraisement was as follows:

We, the undersigned, disinterested housekeepers of Kenton county, not related to any party to this action, having been duly appointed and sworn by Frank P. Helm, master commissioner of the Kenton chancery court, to value the hereinafter-described property adjudged to be sold, do value it as follows, this 18th day of February, 1880:

The interest of N. C. Morse, deceased, in John Carnan's survey of 20,510 acres, at $300.00.

Also his interest in John Carnan's survey of 10,000 acres, at $150.00.

Also his interest in Samuel Young's survey of 30,973½ acres, at $350.

Also his interest in Thos. Franklin's survey of 116,656 acres, at $400.

T. F. HALLAM.
F. A. PRAGUE.

Subscribed and sworn to before me by T. F. Hallam and F. A. Prague this 18th day of February, 1880.

FRANK P. HELM, *M. C.*

83 At the same court and on the same day, viz., the 25th day of February, 1880:

"Came Mary Z. Morse and filed a receipt for the purchase-money herein."

Said receipt is as follows:

"Received, Covington, February 20th, 1880, of Charles Evans one thousand dollars in full of purchase-money of lands purchased by him at master commissioner's sale February 19th, 1880.

MARY Z. MORSE,
Administratrix of N. C. Morse, Deceased."

At the same court, on the 1st day of March, 1880:

"The master commissioner's report of sale herein is confirmed."

At the same court, on the 10th day of March, 1880:

"On motion of the plaintiff and Charles Evans, the master is ordered to make a deed to Charles Evans for the property purchased herein. The master commissioner, F. P. Helm, produced a deed to Chas. Evans, which was examined and approved by the court, acknowledged by the master to be his act and deed, and ordered to be certified to the proper office for record."

At a chancery court for said county, on June 14th, 1884:

"The master commissioner is allowed for his services herein, to be paid by the plaintiff."

Kenton Chancery Court.

I, H. C. Hallam, clerk of said court, hereby certify that this and the preceding — pages contain a complete and true transcript of the record in the cause named in the caption.

84 Witness my hand this 13th day of December, 1887.

H. C. HALLAM, *Clerk.*

Plaintiffs introduced evidence tending to prove that N. C. Morse, Jr., was a son and heir-at-law of N. C. Morse, Sr., and that N. C. Morse, Sr., died intestate. Plaintiffs read as evidence a deed from Frank P. Helm, master commissioner of the Kenton chancery court, to Charles Evans, dated March 10th, 1880, and marked "F."

Said deed is in words and figures as follows, to wit:

Whereas the Kenton chancery court, in the State of Kentucky, at its October term, A. D. 1879, rendered a judgment in the action of Mary Z. Morse, administratrix of the estate of N. C. Morse, deceased, plaintiff, against the heirs and creditors of the said N. C. Morse, deceased, directing the sale of the property hereby conveyed, which said sale was accordingly made to Charles Evans, of Delhi Hamilton county, Ohio, on the 10th day of February, 1880, and was reported at the February term, 1880, by the commissioner of the court, and the court, at its same term, 1880, confirmed that report, and at its same term, 1880, on motion of said Charles Evans, directed the undersigned to convey to the grantee herein named the property hereinafter described:

Now, therefore, in consideration of the premises, Frank P. Helm, master commissioner of the Kenton chancery court, hereby aliens and conveys unto the said Charles Evans, his heirs and assigns, the following-described real estate, being the entire interest of the said Mary Z. Morse, administratrix, and Charles P. Morse, Nathan C. Morse, Wm. O. Chenault and Belle Chenault, Samuel F. B. Morse, Sallie B. Morse, and Mattie W. Morse, only heirs of said N. C. Morse, deceased, and Chambers, Stevens & Co., John Shillito & Co.,

85 Blase & Nie, and all the other creditors of said N. C. Morse, deceased, in said lands, and described as follows, to wit:

John Carnan's survey of 20,510 acres, in the State of Kentucky, counties of —— ——: Beginning at letter "A" in the plat, a black

oak standing in the south nine degrees east line of a tract of land surveyed for P. D. Roberts, being one hundred (100) poles from the southeast corner of said tract, thence north nine degrees west two thousand and twenty-six and ¾ poles (2,026¾) to "B," a white oak; thence north eighty-one degrees east sixteen hundred and twenty (1,620) poles to "C," a sugar tree; thence south nine degrees east two thousand and twenty-six ¾ (2,026¾) poles to "D," a hickory; thence south eighty-one degrees west sixteen hundred and twenty (1,620) poles to the beginning.

Also John Carnan's survey of 23,823 acres, lying in the counties of —— ——, State of Kentucky: Beginning on the north side of Kentucky river at two sugar trees and a buckeye standing at the mouth of the north or left-hand fork of three forks as you go up the river, thence running down the river and binding in the meanders thereof to a sugar tree and ash standing at the end of sixteen hundred and twenty poles from the beginning, when reduced to a straight line; thence north nine degrees west twenty-three hundred and eighty-two and ⅓ (2,382⅓) poles to a hickory; thence north eighty-one degrees east sixteen hundred poles (1,600) to a black oak; thence south nine degrees east eighteen hundred poles to an entry made by Adams & Crow; thence binding with the said entry south forty degrees west three hundred and eighty (380) poles, south nine degrees east three hundred and sixty (360) poles; thence north sixty degrees east two hundred and forty poles to the beginning.

86 Also Samuel Young's survey of 30,973½ acres, lying in the counties of —— ——, in the State of Kentucky: Beginning at a black oak standing at the end of four hundred and forty poles in the north nine degree west line, drawn from the mouth of the north fork of the three forks of the Kentucky river, and running thence north nine degrees west 3,850 poles to a hickory; thence north eighty-one east 1,375 poles to a black oak; thence south nine east 3,000 poles to letter "D," on Kentucky river, at a sugar tree near the mouth of a large branch; thence running down and binding with the meanders of the river to a buckeye at the east end of six hundred and forty poles when reduced to a straight line, where it intersects with an entry made by Adams & Crow; thence binding by said entry N. 87 degrees W. 240 poles; thence S. 40 degrees E. 70 poles, thence S. 86 degrees W. 180 poles, thence S. 77 degrees W. 400 poles, S. 40 degrees W. 180 poles to the beginning.

Also the John Carnan survey of 10,000 acres, lying in the counties of —— ——, State of Kentucky, and described as follows: Beginning at the letter "A," a hickory, being the northwest corner of a tract of land of (30,373⅓) thirty-three hundred and seventy-three and one-third acres, surveyed for Samuel Young, and on a north nine degree west line drawn from the mouth of the north fork of the three forks of the Ken-ucky river, thence north nine degrees west 1,166⅔ poles to a black oak; thence north eighty-one degrees east 1,375 poles to "C," a black oak; thence so-th nine degrees east 1,166⅔ poles to a black oak; thence south eighty-one degrees west 1,375 poles to the beginning.

Also the Thomas Franklin survey of 116,6506 acres, lying in the counties of —— ——, in the State of Kentucky, and described as follows: On an entry made the 17th day of July, 1784, by virtue of thirty-five Treasury warrants, Nos. 16,224, 16,226, 16,244, 16,245, 16,261, *16,261*, 16,262, 18,400, 18,404, 18,421, 18,679, 18,711, 19,760, 19,761, 19,763, 19,765, 19,766, 19,767, 19,778, 19,769,
87 19,770, 19,771, 19,772, 19,773, 19,774, 19,775, 19,776, 19,777, 19,778, 19,779, 19,781, 19,782, 19,783, 19,784, 19,785, and fifteen hundred and fifty-six acres on a part of a Treasury warrant No. 19,786, lying and being in the county of Fayette, at that time between the north and middle forks of the River Kentucky. Beginning at three maple trees and one elm on the northerly side of the middle fork of Kentucky —, at its junction with the north fork, and running up the said middle fork and binding thereon as follows, viz: N. 35 E. 60 poles, N. 30 E. 44 poles, N. 89 E. 48 poles, N. 60 E. 56 poles, N. 50 E. 50 poles, S. 29 E. 62 poles, S. 20 W. 80 poles, S. 34 E. 76 poles, S. 56 E. 50 poles, S. 50 E. 70 poles, S. 78 E. 60 poles, S. 86 E. 86 poles, S. 81 E. 60 poles, S. 54 E. 40 poles, S. 63 E. 48 poles, S. 78 E. 72 poles, N. 65 E. 100 poles, N. 77 E. 120 poles, S. 47 E. 40 poles, S. 11 E. 100 poles, S. 40 E. 60 poles, S. 70 E. 20 poles, east 30 poles, N. 49 E. 26 poles, N. 28 W. 46 poles, N. 5 W. 50 poles, N. 25 W. 100 poles, N. 29 E. 140 poles, N. 60 E 100 poles, N. 69 E. 50 poles, S. 30 E. 102 poles, S. 74 E. 52 poles, S. 25 E. 60 poles, S. 14 W. 54 poles, S. 3 E. 46 poles, S. 15 E. 40 poles, S. 46 W. 46 poles, S. 15 W. 44 poles, S. 2 E. 40 poles, S. 21 E. 68 poles, S. 48 E. 80 poles, S. 41 E. 70 poles, S. 18 E. 60 poles, S. 15 W. 90 poles, S. 28 E. 86 poles, S. 41 E. 68 poles, S. 57 E. 100 poles, S. 5 E. 46 poles, S. 62 W. 90 poles, S. 45 W. 44 poles, S. 6 E. 84 poles, S. 33 E. 80 poles, S. 6 W. 30 poles, S. 56 E. 36 poles, N. 74 E. 56 poles, due north 98 poles, N. 44 E. 50 poles, N. 24 E. 60 poles, N. 40 E. 50 poles, N. 26 E. 66 poles, N. 35 E. 80 poles, N. 82 E. 82 poles, S. 40 E. 32 poles, S. 13 W. 74 poles, S. 34 E. 96 poles, S. 70 E. 130 poles, N. 75 E. 130 poles, N. 85 E. 200 poles, S. 27 E. 60 poles, S. 15 E. 70 poles, S. 53 W. 42 poles, S. 10 E. 34 poles, S. 77 E. 60 poles, N. 76 E. 70 poles, S. 60 E. 30 poles, S. 14 E. 74 poles, S. 25 E. 48 poles, S. 2 E. 84 poles, S. 16 E. 80 poles, S. 33 W. 78 poles, S. 68 W. 80 poles, S. 52 W. 80 poles, S. 40 W. 70 poles, S. 1 W. 76 poles, S. 31 E. 40 poles, east
88 60 poles, N. 68 E. 64 poles, N. 49 E. 80 poles, N. 34 E. 100 poles, N. 83 E. 60 poles, S. 17 E. 90 poles, S. 28 E. 84 poles, east 40 poles, 77 E. 80 poles, N. 47 E. 48 poles, N. 19 E. 95 poles, N. 24 E. 78 poles, S. 62 E. 50 poles, S. 19 W. 104 poles, S. 10 W. 46 poles, S. 3 W. 40 poles, S. 5 W. 132 poles, S. 50 W. 116 poles, thence S. 25 E. 52 poles, S. 37 E. 40 poles, N. 52 E. 200 poles, N. 64 E. 154 poles, S. 10 E. 140 poles, S. 24 E. 8 poles, S. 47 E. 42 poles, east 40 poles, N. 51 E. 80 poles, N. 73 E. 60 poles, S. 49 E. 46 poles, S. 12 E. 92 poles, S. 30 W. 148 poles, south 40 poles, S. 30 E. 146 poles, S. 80 E. 50 poles, east 45 poles, N. 84 E. 47 poles, S. 30 E. 52 poles, S. 35 W. 275 poles, S. 12 E. 40 poles, S. 74 E. 180 poles, S. 50 E. 40 poles, S. 62 E. 80 poles, S. 85 E. 80 poles, N. 75 E. 72 poles, S. 72 E. 40 poles, S. 28 E. 68 poles, S. 40 W. 140 poles, S. 65 W. 56 poles, N. 68 W. 100 poles, S. 63 W. 78 poles, S. 35 W. 68

poles, S. 62 W. 16 poles, S. 9 W. 48 poles, S. 19 E. 93 poles, N. 70 E. 109 poles, S. 84 E. 90 poles, S. 27 E. 65 poles, west 64 poles, S. 40 W. 50 poles, south 70 poles, S. 10 E. 20 poles, S. 35 W. 78 poles, S. 60 W. 90 poles, S. 52 W. 50 poles, south 22 W. 40 poles, S. 25 E. 40 poles, S. 60 E. 36 poles, S. 71 E. 30 poles, east 100 poles, S. 30 E. 36 poles, N. 42 E. 60 poles, S. 15 E. 40 poles, S. 50 W. 24 poles, N. 75 W. 40 poles, S. 60 W. 28 poles, S. 20 W. 20 poles, S. 76 poles, S. 25 W. 60 poles, S. 10 W. 30 poles, S. 7 W. 40 poles, S. 1 E. 140 poles, S. 16 W. 72 poles, S. 42 E. 60 poles, S. 70 E. 40 poles, N. 78 — 75 poles, S. 61 E. 50 poles, S. 14 W. 50 poles, S. 20 W. 44 poles, S. 11 W. 44 poles, S. 20 E. 94 poles, S. 46 E 70 poles, S. 10 E. 60 poles, S. 22 W. 50 poles, S. 10 W. 44 poles, S 11 E. 83 poles, S. 16 E. 70 poles, S. 37 E. 67 poles, S. 65 E. 80 poles, E. 97 poles, W. 76 N. 114 poles, S. 11 E. 36 poles, S. 25 W. 54 poles, S. 8 E. 98 poles, S. 36 W. 64 poles, S. 48 W. 34 poles, N. 83 W. 64 poles, W. 80 poles, N. 60 W. 52 poles, north 16 W. 76 poles, N. 23 W. 80 poles, N. 64 W. 30 poles, N. 80 W. 30 poles. S. 55 W. 26 poles, S.
89 17 W. 66 poles, due south 90 poles, S. 6 E. 80 poles, S. 46 E. 120 poles, S. 7 W. 80 poles, S. 57 E. 80 poles, E. 38 poles, N. 47 E. 92 poles, south 82 E. 80 poles, S. 5 W. 92 poles, S. 19 W. 110 poles, S. 12 W. 150 poles, S. 6 W. 132 poles, S. 10 E. 84 poles, S. 60 E. 70 poles, N. 70 E. 180 poles to a hickory, elm, and sugar tree, the elm marked "(F;)" thence N. 79 E. 120 poles to a black oak; thence north 40 east 1,700 poles to three sycamores or buttonwood trees, marked "(F)," on the southern side of the north fork of the River Kentucky; thence down the said fork and binding thereon as follows, viz: N. 52 W. 132 poles, N. 22 W. 58 poles, N. 64 E. 88 poles, N. 50 E. 50 poles, N. 8 E. 66 poles, N. 25 W. 80 poles, N. 20 W. 70 poles, N. 33 W. 76 poles, N. 88 W. 60 poles, S. 61 W. 90 poles, S. 84 W. 50 poles, N. 30 W. 50 poles, N. 54 E. 296 poles, N. 5 W. 26 poles N. 41 W. 20 poles, N. 80 W. 80 poles, N. 35 W. 34 poles, N. 33 E. 52 poles, N. 69 E. 80 poles, N. 53 E. 24 poles, N. 33 E. 40 poles, N. 20 E. 38 poles, N. 3 W. 80 poles, N. 45 E. 192 poles, N. 30 E. 40 poles, N. 28 W. 48 poles, N. 70 W. 24 poles, S. 72 W. 200 poles, N. 68 W. 40 poles, N. 15 W. 56 poles, N. 51 E. 126 poles, N. 18 E. 38 poles, N. 3 W. 32 poles, N. 55 W. 100 poles, N. 30 W. 60 poles, N. 47 E. 64 poles, N. 30 E. 50 poles, N. 17 W. 54 poles, N. 12 E. 50 poles, N. 9 W. 48 poles, N. 45 E. 50 poles, N. 85 E. 100 poles, N. 78 E. 82 poles, N. 60 E. 70 poles, N. 26 E. 60 poles, N. 10 E. 40 poles, N. 54 W. 50 poles, S. 80 W. 40 poles, S. 52 W. 150 poles, S. 70 W. 102 poles, N. 45 W. 62 poles, N. 7 W. 66 poles, W. 24 W. 120 poles, N. 60 E. 68 poles, N. 87 E. 162 poles, N. 60 E. 38 poles, N. 26 W. 36 poles, N. 57 W. 40 poles, N. 75 W. 88 poles, N. 47 W. 120 poles, N. 20 W. 86 poles, N. 26 W. 130 poles, N. 15 E. 108 poles, N. 34 E. 94 poles, N. 59 E. 100 poles, S. 67 E. 90 poles, S. 75 E. 64 poles, N. 68 E. 60 poles, N. 44 E. 50 poles, N. 9 W. 37 poles, N. 85 W. 128 poles, N. 10 W. 30 poles, N. 41 E. 160 poles, S. 68 E. 85 poles, N. 87 E. 120 poles, N. 42 E. 72 poles, N. 8 E. 120 poles, S. 9 W. 52 poles, N. 65 W. 40 poles, S. 74 W. 160 poles, N. 55 W. 60 poles,
90 N. 16 W. 72 poles, N. 23 E. 40 poles, N. 54 E. 180 poles, N. 42 E. 152 poles, N. 33 E. 30 poles, N. 20 E. 40 poles, N. 35 W. 40 poles, N. 87 W. 118 poles, N. 55 W. 86 poles,

N. 40 W. 88 poles, north 48 poles, N. 18 E. 94 poles, N. 45 E. 140 poles, N. 57 E. 78 poles, N. 35 W. 86 poles, N. 60 W. 70 poles, S. 59 W. 60 poles, S. 20 W. 50 poles, S. 15 W. 74 poles, S. 48 W. 54 poles, N. 70 W. 122 poles, N. 16 W. 300 poles, N. 26 W. 90 poles, N. 54 W. 130 poles, N. 75 W. 160 poles, N. 84 W. 65 poles, N. 56 W. 77 poles, N. 36 E. 82 poles, N. 70 E. 32 poles, east 200 poles, N. 55 E. 96 poles, north 80 poles, N. 12 W. 76 poles, N. 28 W. 150 poles, N. 45 W. 70 poles, S. 72 W. 48 poles, S. 40 W. 100 poles, S. 21 W. 90 poles, S. 10 W. 144 poles, S. 34 W. 80 poles, S. 67 W. 134 poles, N. 72 W. 64 poles, N. 59 W. 70 poles, N. 35 W. 32 poles, N. 13 W. 290 poles, N. 26 W. 120 poles, N. 10 E. 92 poles, N. 55 E. 62 poles, S. 81 E. 190 poles, N. 72 E. 40 poles, N. 32 E. 60 poles, N. 49 W. 96 poles, N. 75 W. 164 poles, west 120 poles, N. 85 W. 82 poles, N. 73 W. 80 poles, N. 85 W. 60 poles, S. 65 W. 70 poles, S. 30 W. 80 poles, S. 6 W. 95 poles, S. 10 E. 250 poles, S. 17 W. 99 pooes, S. 65 W. 68 poles, N. 18 W. 180 poles, N. 8 W. 68 poles, N. 24 E. 86 poles, N. 10 E. 82 poles, N. 19 W. 60 poles, north 80 poles, N. 17 E. 90 poles, N. 10 W. 38 poles, N. 45 W. 46 poles, west 82 poles, S. 50 W. 68 poles, S. 72 W. 40 poles, N. 87 W. 300 poles, N. 72 W. 138 poles, S. 73 W. 64 poles, S. 57 W. 185 poles, N. 75 W. 115 poles, N. 20 W. 95 poles, N. 40 E. 56 poles, N. 64 E. 369 poles, N. 45 E. 159 poles, N. 26 E. 114 poles, N. 26 W. 60 poles, N. 75 W. 52 poles, S. 60 W. 48 poles, S. 37 W. 80 poles, S. 66 W. 16 poles, S. 72 W. 124 poles, S. 65 W. 100 poles, S. 35 W. 128 poles, S. 67 W. 56 poles, N. 40 W. 24 poles, N. 25 W. 93 poles, N. 35 W. 37 poles, N. 85 W. 58 poles, N. 25 W. 78 poles, N. 5 W. 140 poles, N. 35 E. 68 poles, N. 5 E. 30 poles, N. 15 W. 44 poles, N. 25 W. 56 poles, N. 73 W. 50 poles, S. 30 W. 184 poles, S. 20 W. 96 poles, S. 10 W. 250 poles, S. 51 W. 86 poles, N. 73 W. 96
91 poles, N. 17 W. 100 poles, N. 31 E. 112 poles, N. 5 E. 68 poles, N. 25 W. 92 poles, N. 8 E. 106 poles, N. 45 E. 62 poles, N. 15 E. 70 poles, N. 48 W. 38*m* poles, S. 72 W. 60 poles, N. 82 W. 40 poles, S. 83 W. 72 poles, S. 50 W. 88 poles, S. 35 W. 50 poles, S. 11 W. 123 poles, S. 54 W. 51 poles, S. 87 W. 220 poles, N. 29 W. 140 poles, N. 51 W. 50 poles, N. 82 W. 40 poles, S. 73 W. 50 poles, S. 60 W. 44 poles, S. 35 W. 40 poles, S. 13 W. 80 poles, S. 45 W. 94 poles, S. 81 W. 70 poles, S. 65 W. 34 poles, S. 50 W. 104 poles, N. 58 W. 36 poles, N. 10 E. 62 poles, N. 33 E. 81 poles, N. 23 E. 109 poles, N. 38 E. 68 poles, N. 13 E. 60 poles, N. 26 W. 104 poles, N. 10 E. 80 pooes, N. 40 E. 100 poles, N. 27 E. 52 poles, N. 3 E. 36 poles, N. 65 W. 94 poles, S. 66 W. 140 poles, S. 60 W. 230 poles, S. 56 W. 116 poles, S. 76 W. 130 poles, S. 56 W. 110 poles, N. 88 W. 240 poles, S. 45 W. 86 poles, south 122 poles, S. 20 W. 62 poles, S. 43 E. 130 poles, S. 32 E. 94 poles, south 310 poles, S. 11 W. 134 poles, S. 21 W. 180 poles, S. 25 W. 142 poles, S. 35 W. 120 poles, S. 65 W. 81 poles, N. 80 W. 73 poles, N. 25 W. 60 poles, N. 12 E. 52 poles, N. 16 W. 60 poles, N. 56 W. 56 poles, S. 64 W. 189 poles, S. 56 W. 137 poles, S. 64 W. 114 poles, S. 57 W. 96 poles, S. 20 W. 114 poles; thence S. 29 E. 64 — to the place of beginning.

To have and to hold said property, with appurtenances, unto the said grantee and his heirs, representatives, and assigns forever.

Witness the hand of the said master commissioner the 10th day of March, 1880.

FRANK P. HELM,
Master Commissioner.

STATE OF KENTUCKY:

Kenton Chancery Court, Feb'y Term.

MARCH 10, 1880.

The master commissioner, Frank P. Helm, produced to the court this deed to Charles Evans, which was examined and approved by the court and was acknowledged by the master to be his act and deed; whereupon the same was ordered to be, and is hereby,
92 certified to the proper office for record.

Attest: H. CLAY WHITE, *Clerk*,
By EDW. C. HOPPER, *D. C.*

STATE OF KENTUCKY, }
County of Lee, } *sct:*

I, W. P. Hill, clerk of the county court for the county aforesaid, do certify that this deed from Frank P. Helm, master commissioner of the Kenton chancery court, to Charles Evans was this day produced to me in my office and certified as above for record; whereupon the same and the foregoing and this certificate have been duly recorded in my office.

Witness my hand this 6th day of January, 1881.

W. P. HILL, *Clerk*,
By JAMES F. BLOUNT,
Deputy Clerk.

The plaintiffs introduced evidence tending to show that N. C. Morse, Sr., by and through David Morse, his agent and tenant, settled upon a part of the 10,000-acre survey of John Carnan's in controversy in 1874 and built a house and cleared four or five acres, which was afterwards increased, and that he lived in said house, which was in the boundaries of said survey, and that he thereafter claimed to the extent of the boundary of said tract. The said David Morse lived in said house for several years—until about 1879—when he left it, but put into the house Elkannah Townsend as a tenant of plaintiffs. Townsend remained in said house as plaintiffs' tenant until 1883 or 1884, when he was induced by J. M. Thomas to leave the house and premises and go to and occupy a house owned by said Thomas on another part of the ten-thousand-acre tract.

Plaintiffs introduced and read as evidence the original bill
93 and the answer of John Jay Anderson, Presley A. Howard, and John S. Wyatt, the replication of plaintiffs, and the final decree in the case of N. C. Morse *vs.* John Jay Anderson and others, No. 189, lately pending in equity in the circuit court of this district.

Said bill above referred to, from case No. 1289, is in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Kentucky.

NATHAN C. MORSE, Who is a Citizen of the State of Iowa, Plaintiff,
vs.
CHARLES EVANS, Who is a Citizen of the State of Ohio; MARY Z. Morse, Charles P. Morse, Samuel F. B. Morse, Sallie B. Morse, Mattie W. Morse, Arabella Chenault and William O. Chenault, J. A. Anderson, Presley A. Howard, Josiah Anderson, Paul C. Bedford, John S. Wyatt, Nathaniel Williams, Green Wells, James Garrett, Wesley Spencer, Moses Spencer, Orlando Forkner, —— De Hart, —— McDaniel and —— Estes and Darius Congleton, Who are Citizens of the State of Kentucky, Defendants.

To the honorable the judges of said court:

Humbly complaining unto your honors, your orator Nathan C. Morse, who is a citizen and resident of the State of Iowa, complains of the above-named defendants, who are citizens of the State of Kentucky, and respectfully represents and shows that he is one of the children and heirs-at-law of Nathan C. Morse, late of the county of Kenton and State of Kentucky, deceased; that the matters in controversy herein involve more than five thousand dollars, exclusive of costs; that said Nathan C. Morse, deceased, died intestate, leaving defendant Mary Z. Morse his widow, and Charles P.
94 Morse, Samuel F. B. Morse, Arabella Chenault, who is now married to William O. Chenault; Sallie B. Morse, and Mattie W. Morse and your orator his only children and heirs-at-law; that said Nathan C. Morse, deceased, was at the time of his death the owner of a certain tract of land lying in the counties of Powell, Wolfe, and Menifee, in the State of Kentucky and in this district; said tract is described as follows, viz., being the John Carnan survey of 10,000 acres: Beginning at letter "A," a hickory, being a northwest corner of a tract of land of 30,573¼ acres surveyed for Samuel Young, and in a north nine degree west line drawn from the mouth of the north fork of the three forks of the Kentucky river, thence north nine degrees west eleven hundred and sixty-six and ⅔ (1,166⅔) poles to a black oak; thence N. eighty-one degrees east thirteen hundred and seventy-five (1,375) poles to "C," a black oak; thence south nine degrees east eleven hundred and sixty-six and ⅔ (1,166⅔) poles to a black oak; thence south eighty-one degrees west thirteen hundred and seventy-five poles to the beginning.

Your orator further shows that said tract of land was sold to *to* said N. C. Morse, deceased, by Daniel Breck by deed dated September 13th, 1865. The same was conveyed to said Breck by Thomas Duckham by deed dated July 17th, 1838. The same was conveyed

to said Duckham by John McCalla, collector of direct tax and internal revenue for the State of Kentucky, by deed dated August 23, 1839, it having been previously sold by John H. Morton, collector of the second collection district, for taxes due thereon *for taxes due thereon* to the United States, as the property of John Carnan, for whom the same was conveyed and to whom it was patented by the Commonwealth of Virginia on the — day of ——, 1786, at which sale said Duckham became the purchaser of said tract. The original or certified copies of said patent and deeds will be filed herewith as exhibits.

95 Your orator further states that said deed from Daniel Breck to said Nathan C. Morse was made in trust for said Morse and other parties, and that since that time said Morse became the purchaser of all the interests of his cobeneficiaries in said trust, and owned the entire interest conveyed in said deed from Breck at the time of his decease.

Your orator further represents and shows to your honors that after the death of said N. C. Morse proceedings were duly instituted in the chancery court of Kenton county, Kentucky, by said Mary Z. Morse, as the administratrix of said decedent, to sell said tract of land; that all the heirs of said N. C. Morse were made parties thereto except your orator, who was never served with process; that in the course of such proceedings said tract of land was duly sold to defendant Charles Evans, a resident of Hamilton county, Ohio, and such sale was duly confirmed by the court and a deed duly executed to him by the commissioner of the said court, which deed is herewith filed, marked "Exhibit A."

Your orator further shows that defendants J. A. Anderson, Presley A. Howard, Josiah Anderson, Paul C. Bedford, John S. Wyatt, Nathaniel Williams, Wesley Spencer, Orlando Forkner, Moses Spencer, Green Hall, —— De Hart, —— McDaniel, and —— Estes (the first or Christi-n names of the three last-named parties being to your orator unknown) are claiming to hold possession of certain portions of said tract of land under conveyances from said Duckham, as your orator is informed and believes. Your orator does not know the precise quantity of land claimed by these parties in said tract, but he charges that the deeds of conveyance under which they claim were executed subsequently to the said deed made by said Duckham to said Breck, as aforesaid, under which your orator claims

96 title. He charges that the deeds of conveyance made by Duckham to said parties subsequently to his conveyance to Breck conveyed no title in the land aforesaid to said parties and are absolutely void.

Your orator further charges on information and belief that defendants James Garrett and Green Wills claim to hold possession of a portion of said tract of land under a patent from the Commonwealth of Kentucky, issued about the year 1841 or 1842 and long after the patent to said land was issued by the Commonwealth of Virginia to said John Carnan. Said Kentucky patent was issued to one Jonas Forkner and by him transferred to Aubry Forkner and by him to said Garrett and Wills, and your orator charges that

said patent from the State of Kentucky was obtained by said Forkner with full knowledge of the fact that the same land had previously been patented by the Commonwealth of Virginia to said John Carnan, and that said Garrett and Wills knew such fact when said patent was transferred to them. Your orator further charges on information and belief that although said patent issued by said Commonwealth of Kentucky purports to convey by metes and bounds, that there are no marked boundaries defining the same and that said patent is wholly void.

Your orator further charges that the claim set up by said defendants to said land is a cloud upon your orator's title, and prevents said land from being sold or being made available to plaintiff.

The premises considered, your orator prays that the parties named in the caption as defendants, to wit, Charles Evans, Mary Z. Morse, Charles P. Morse, Samuel F. B. Morse, Sallie B. Morse, Mattie W. Morse, Arabella Chenault and William O. Chenault, J. A Anderson, Presly A. Howard, Josiah Anderson, Paul C. Bedford,
97 John S. Wyatt, Nathaniel Williams, Green Wills, James Garrett, Wesley Spencer, Moses Spencer, Orlando Forkner, Green Hall, —— De Hart, —— McDaniel, —— Estes, and Darius Congleton, be made such; that subpœna issue against them; that they be required to answer all and singular the allegations of this bill as if specifically interrogated thereunto; that they be required to state under what title and to what extent they claim land in said survey, and if upon such exhibition it should appear that the deeds executed to them or any of them by said Duckham or purporting to be from him were executed or bear date subsequently to the deed executed by Duckham to Breck, that the defendant holding under such deed be compelled to deliver them up to be canceled, and that they be canceled and declared void.

That defendants Wills and Garrett exhibit the patent or patents under which they claim to hold, issued by the Commonwealth of Kentucky, or any other instrument of title under which they may claim, and that the same may be declared void; and should the court be of opinion that the deed from Duckham to defendants are valid, then that said land be partitioned, and that the parts or portions to which each one is entitled be allotted to him or her in severalty. He prays that the dower of defendant Mary Z. Morse may be set off and allotted to her. He prays for all necessary orders in the progress of the cause, and for such special and general relief as in equity he is entitled to and as is consistent with the rules and principles of chancery practice, and he prays for general relief.

By FINNELL & McKEE,
Solicitors for Plaintiff.

U. S. OF AMERICA, }
District of Kentucky. }

Joseph C. Finnell, one of plaintiff's solicitors, says that
98 the plaintiff in this cause is absent from the State, and that the statements contained in the foregoing bill are true, as he verily believes.

JOSEPH C. FINNELL, *Sol.*

Sworn to and subscribed before me this 30th day of January, 1883.

H. BOSTWICK, *Clerk.*

Said answer referred to, from case No. 1289, is in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Kentucky.

NATHAN C. MORSE, Plaintiff,
against
CHARLES EVANS, MARY Z. MORSE, CHARLES P. MORSE, Samuel F. B. Morse, Sallie B. Morse, Mattie W. Morse, Arabella Chenault and William O. Chenault, J. A. Anderson, Presley A. Howard, Josiah Anderson, Paul C. Bedford, John S. Wyatt, Nathaniel Williams, Green Wills, James Garrett, Wesley Spencer, Moses Spencer, Orlando D. Forkner, —— De Hart, —— McDaniel, —— Estes, and Darius Congleton, Defendants. } Answer.

The defendants John J. Anderson, who is sued in the name of John A. Anderson; Presley A. Howard, Josiah Anderson, and John S. Wyatt, for answer and defense to the bill of complaint of Nathan C. Morse, complainant: These defendants, now and at all times hereafter saving and reserving unto themselves and each of them all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto or to so much or said parts thereof as the defendants are advised it is material or
99 necessary for them or either of them to make answer unto, answering, say and, etc.

It is not true and they deny that Nathan C. Morse, the father of the plaintiff, was at his death or the plaintiff is now or was at the institution of this action the owner of or had any interest in either of the tracts or boundaries of land described and claimed by these defendants; they deny that the deed from Thomas Duckham to Daniel Breck passed any right or title to any land claimed by these defendants, and they deny that the deed from Da-iel Breck to Nathan C. Morse and others passed any right or title to said Morse in or to any land claimed by these defendants, and they say that said Breck never was at any time seized or possessed of any part of the land claimed by these defendants, and that he never asserted any claim or interest in or to any land in the boundaries claimed by these defendants, and they say that said Nathan C. Morse never was at any time seized or possessed of any land or any interest in the land annever asserted any claim or interest in or to any land claimed by these defendants, and they deny that any right, title, or interest ever passed from said Nathan C. Morse to the plaintiff by descent or otherwise; they say that the deed from Duckham to Breck was never recorded in Montgomery or Powell counties, where said land

was and is situated, or any part of it, nor in any county in which the said land or any part of it was or is now situated; that said deed was never recorded in any county in which any part of the land claimed by the plaintiffs is situated, and they never had any knowledge or notice of said deed until since this suit was instituted, and they are not bound by it; they say that the deed from Daniel Breck to Nathan C. Morse and others was never recorded in any county in which the land claimed by the plaintiffs or the land claimed by these defendants or any part of either is situated.

100 They deny that there is no marked boundary defining their tracts of land; they affirm that their lines and corners are plainly and well marked and their boundaries are well defined.

This defendants, further answering, say that they and their codefendants, Nathaniel Williams, are the joint owners and in the actual possession of the two following tracts or boundaries of land, formerly situated in Montgomery county, now Powell and Menifee counties, on Red river. The first tract is bounded as follows, to wit: Beginning at a line tree on the south side of Red river, formerly a corner of Jonas Forkner, thence S. 51 W. 69.4 poles, S. 22½ E. 40.4 poles to a pine on the top of the dividing ridge between Auxier and Fish Trap branches; thence with the divide S. 2 W. 16 poles, S. 27½ W. 18 poles, S. 9½ E. 16 poles, S. 5½ E. 26.7 poles to a pine on Carnan's old line (here defendants' deed and boundary enters inside of the John Carnan 10,000-acre patent); thence S. 34½ E. 20 poles to a pine; thence S. 5½ E. 19 poles to a pine tree; thence S. 8 E. 65 poles to a chestnut-oak tree; thence S. 25½ W. 9.4 poles to a pine, S. 45½ W. 24 poles, S. 18 W. 27 poles, south 23.4 poles, S. 50 W. 7 poles, south 43 poles, S. 60 W. 22 poles, N. 89½ W. 38 poles, S. 4 W. 55.4 poles, S. 24½ W. 27.4 poles, S. 11½ W. 25 poles to a chestnut-oak corner marked "A. H. W.," corner with O. D. Forkner; thence with the main divide between the waters of the north and middle fork of Red river, the established line of Anderson and Co. and said Forkner, S. 17½ E. 32 poles to a pine; thence S. 40¼ W. 18 poles to a chestnut oak; thence S. 16½ E. 28 poles to a pine, S. 89 E. 20.7 poles to a pine, S. 11 E. 22.7 poles to a pine, S. 18 W. 29.4 poles to a chestnut tree, S. 32½ W. 24 poles to a pine, S. 13½ W. 18 poles to a pine, S. 6 E. 20 poles to a pine, S. 26¼ W. 16 poles to a pine, S. 72 W. 14 poles, S. 11½ W. 18.7 poles, S. 30 W. 16 poles, S. 30 E. 38.7 poles, S. 33 E. 20 poles, S. 79 E. 18 poles,

101 S. 66 E. 32 poles, S. 20 E. 9 poles, S. 43 E. 7 poles, S. 85 E. 12 poles to a chestnut oak, N. 12½ E. 35 poles, N. 64½ E. 16 poles, S. 55 E. 22.& poles, S. 18 E. 17.5 poles, S. 81½ E. 19.5 poles, east 13.2 poles, S. 66 E. 15.9 poles to a white-pine tree, S. 27 E. 10 poles, N. 83 E. 26.7 poles, N. 60½ E. 24 poles, N. 41 E. 19 poles, N. 76½ E. 30.8 poles, S. 1 W. 33.3 poles to a pine tree, S. 57¼ E. 10.6 poles, S. 87 E. 40.9 poles, N. 74 E. 17.5 poles, N. 56¾ E. 18 poles, N. 86½ E. 22.7 poles, S. 61 E. 18.7 poles, S. 85 E. 16 poles to three pines, corner with Forkner and J. M. Thomas; thence, leaving said Forkner's line and continuing with the dividing ridge, N. 80½ E. 18.9 poles, N. 41¾ E. 16.5 poles, N. 7 W. 22 poles, N. 76½ E. 10 poles, N. 75 E. 21.8 poles, N. 74¾ E. 33.9 poles, S. 75 E. 17.8 poles, S. 61 E. 15

poles, N. 88 E. 20 poles, N. 80 E. 9.4 poles, N. 53 E. 22 poles, N. 78 E. 14 poles, N. 26 E. 18 poles, N. 88 E. 21.1 poles to a pine, N. 37½ E. 15 2 poles, N. 55¾ E. 22.2 poles, N. 43 E. 21.6 poles, N. 65½ E. 17.7 poles, N. 43 E. 8.5 poles to a pine; thence S. 51 E. 21 poles, S. 31 E. 13.2 poles to a pine, N. 81¼ E. 39 poles to a chestnut-oak tree, N. 24 E. 18 poles to a pine, N. 5 W. 19 poles to a pine, N. 43 E. 15 poles a pine, N. 83 E. 38 poles to a white-pine tree; thence N. 58¼ E. 16 poles to a chestnut-oak tree; thence, leaving the main divide, N. 12 W. 21 poles to a chestnut-oak tree on the divide between the Rush Branch and Chimney Top waters; thence with said divide N. 28½ W. 10 poles to a pine; thence N. 10 E. 25 poles to a pine, N. 20½ W. 26.5 poles to a stake, N. 75 E. 33.5 poles to a pine, N. 18 E. 12 poles to a pine, N. 61 E. 40 poles to a pine, N. 73¼ E. 20 poles to a pine, N. 13½ W. 17.5 poles to a pine, N. 29½ W. 10 poles to a pine, N. 23½ W. 28 poles to a stake above a crevice in the creek known as "Pinch 'Em Tight"; thence down the crevice N. 20 E. 8 poles to a marked corner on the stone at the mouth of the crevice; thence west 38 poles to Rush branch;
102 thence down the branch N. 10 W. 20 poles to a spruce pine, N. 23 W. 11 poles, N. 24 W. 10 poles, N. 5½ W. 22 poles, N. 6 W. 37.5 poles, N. 27 W. 47 poles, N. 35 W. 25 poles; thence north 18 W. 21.5 poles, crossing the north fork of Red river; thence N. 53 E. 49 poles, N. 27 E. 20.3 poles; thence N. 79 E. 19 poles, N. 31 E. 14.7 poles, N. 30 W. 20 poles, N. 33 E. 16 poles, N. 12 E. 4 poles, S. 80 W. 11.4 poles, N. 52 W. 8.8 poles, N. 65 W. 10 poles, N. 10 W. 22.2 poles to a pine under a cliff; thence, continuing under the cliff, N. 38 E. 23.4 poles, N. 63 W. 12.4 poles, N. 51 W. 6.7 poles, N. 10 E. 12.7 poles, N. 45 E. 38.8 poles, crossing Carnan's north 81 east line at two poles from the beginning of the last call, and a line drawn from this point S. 81 west as of the date of the patent of John Carnan will go to the pine called for in defendants' boundary herein on Carnan's line, and this boundary aforesaid from said pine, around with the calls given above, include- the land claimed by these defendants in the deed from John T. Magowan and others to them; also the boundary and land embraced in the deed from O. D. Forkner to these defendants, and contains 2,020 acres by survey.

The following are the calls of the balance of the defendants' boundary outside of the John Carnan 10,000-acre patent, but inside of the deed from Thomas Duckham to James P. Magowan and inside of the deed from John T. Magowan and others to these defendants, viz., from the crossing of the Carnan line at the point above designated on the line N. 45 E. 33.8 poles, from said line it is 31.8 poles; thence N. 33 E. 20 poles, N. 51 E. 21.4 poles, N. 38 W. 25 poles, N. 5 E. 16 poles, N. 42 W. 22 poles, N. 22 E. 26 poles, N. 85 E. 38.7 poles, N. 65 W. 14 poles, N. 86 W. 23 poles, N. 12 W. 18 poles; N. 26 W. 19 poles, N. 49 E. 12.2 poles, S. 80 E. 19.8 poles, N. 71 E. 8.8 poles, N. 69 W. 23 poles, N. 37 W. 24 poles, N. 22½ W. 20 poles, N. 58½ E. 14 poles, N. 51 W. 26 poles, west 18.7 poles, N.
103 53½ W. 13 poles, N. 81½ W. 30 poles, N. 29 W. 18.7 poles, N. 16½ W. 19.4 poles, N. 14 E. 15 poles, S. 68½ E. 32 poles, N. 33½ W. 26 poles, N. 30 W. 24 poles, N. 35 W. 25.4 poles, N. 83 E.

21 poles, S. 63 E. 25.4 poles, S. 47 E. 37.4 poles, S. 51 E. 23 poles, S. 67 E. 21.4 poles, S. 52 E. 16.8 poles, S. 82¾ E. 21 poles, N. 24 E. 10 poles, N. 39 W. 17 poles, N. 3 E. 18 poles, S. 67¼ W. 7.4 poles, S. 81 W. 17 poles, N. 51½ W. 27 poles, N. 53 W. 23 poles, N. 54 W. 35.4 poles, N. 35 W. 22.7 poles, N. 59 E. 12 poles, S. 63 E. 20 poles, N. 85 E. 45 poles, N. 19½ W. 25.4 poles, N. 35½ W. 22.3 poles, N. 85 W. 18 poles, N. 66 W. 20 poles, N. 79 W. 18 poles, N. 65 W. 24 poles; N. 42½ E. 12 poles, N. 48 E. 11.3 poles, S. 83 E. 26 poles, N. 73 E. 18.7 poles, N. 11 W. 18.7 poles, S. 75¼ E. 34 poles, N. 1 E. 34 poles, N. 36½ W. 13 poles to a chestnut oak on a ridge at the head of the branch at Wolf Pen creek; thence N. 64 W. 66 poles to a stake near a white oak marked "H. A. B. A.," S. 52 W. 11.3 poles, S. 74 W. 17.4 poles, west 26.7 poles, N. 78 W. 42 poles, N. 15 W. 80 poles; thence with the Indian Creek cliffs N. 61 W. 29 poles, N. 79 W. 18.5 poles, N. 82½ W. 25 poles, S. 42 W. 18 poles, S. 88 E. 35 poles, S. 60 E. 21 poles, S. 71 E. 14 poles, S. 8½ E. 27 poles, S. 57½ W. 18.6 poles, S. 48 W. 15 poles, S. 31¾ E. 36.3 poles, S. 26 E. 23.4 poles, S. 13 E. 18 poles, S. 42 W. 26 poles, N. 37 W. 27 poles, N. 73 W. 8.7 poles, S. 52 W. 19.8 poles, S. 18 W. 18.4 poles, S. 40½ E. 12 poles, S. 33 W. 22 poles, S. 48 W. 18.2 poles, N. 5½ W. 26.4 poles, N. 40 W. 18.6 poles, N. 13½ W. 16.7 poles, N. 36 E. 15 poles, N. 14½ E. 13 poles, N. 6 E. 16.7 poles, N. 1 W. 11.7 poles, N. 18 W. 12.7 poles, N. 47 W. 15 poles, west 7 poles, S. 32 W. 16 poles, S. 30½ E. 16 poles, S. 7 W. 13 poles, S. 72 W. 13 poles, N. 42 W. 10 poles, S. 89 W. 13 poles, N. 20 W. 17 poles, N. 35 W. 87.4 poles, N. 33 W. 33 poles, S. 79 W. 16 poles, S. 26 W. 13 poles, S. 77½ W. 10 poles, S. 57 W. 29.5 poles, S. 44 W. 20 poles, S. 71 E. 15 poles, N. 80 E. 10.5 poles, N. 60 E. 12 poles, west 20 poles, S. 41½ E. 5 poles, S. 4½ W. 5 poles, S. 57 W. 5 poles, S. 77½ W. 24.4 poles, S. 48 E. 14 poles, S. 68½ E. 8 poles, N. 57½ E. 14 poles, S. 64½ E. 42.2 poles, S. 37½ E. 47.3 poles, S. 44 W. 14.5 poles, S. 80 W. 16 poles, S. 18½ W. 88 poles to a white-oak tree, S. 11½ W. 37 poles to three trees marked "J. H.," "W. H.," "O. F."; thence N. 88 W. 27.4 poles, S. 68 W. 75.4 poles, S. 71 W. 29 poles, N. 85¼ W. 26 poles, S. 82½ W. 42 poles, N. 69 W. 26 poles, N. 15½ W. 23.4 poles; and thence N. 81½ W. 13 poles to a chestnut oak and divide; thence S. 1 W. 344.2 poles, crossing Red river to the beginning, containing 5,065 acres 2 roods and 32 poles of land.

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These defendants cannot remember the kind of timber marked on the line and as corner trees, but they affirm that there is marked timber on nearly all the lines marked as line trees and at nearly all the corners marked as corner trees, and that James P. Magowan had said lines and corners marked at or about the time he bought of Duckham, and that these defendants have since had the lines and corners re-marked, and that the lines have been kept plainly marked ever since they were first marked.

These defendants, further answering, say that several years ago a controversy arose between them and their codefendant, O. D. Forkner, about that part of this boundary that lies between the dividing ridge between the north fork and middle fork of Red river and the cliffs of Red river next to said ridge, and that they and said Forkner compromised by their paying him $50.00, and on the 4th

day of April, 1878, said Forkner conveyed said land to defendant John Jay Anderson, John S. Wyatt, and Nathan Williams and one Joel Chenault, who afterwards conveyed his interest to John T. Magowan. Said deed from Forkner to these defendants, &c., and the deed from Chenault to John T. Magowan are filed herewith and made part hereof, marked "C No. 3" & "C No. 4." They are both recorded in the Powell county court clerk's office. They refer to the answer of their codefendant, O. D. Forkner, &c., for the
105 history of his title to said land.

These defendants, further answering, say that they deny that Nathan C. Morse, since the making of the deed from Daniel Breck to Nathan C. Morse and others, became the purchaser of all or any of the interests of his cobeneficiaries in said trust or land, and deny that he owned the entire interest conveyed in said deed from Breck at the time of his decease; and they deny that they were parties to or bound by the proceedings had in the chancery court of Kenton county, Kentucky, by Mary Z. Morse, as administratrix of said decedent, and they deny that the plaintiff was not a party to said record and is not bound by it.

These defendants, further answering, say that Thomas Duckham, under whom the plaintiff claims, sold and conveyed the first tract claimed by these defendants to James P. Magowan on the 9th day of September, 1841. Said deed is recorded in Montgomery county court clerk's office. An official copy of same is filed herewith as a part hereof, marked "C No. 1."

That said Duckham put said Magowan in possession of said land and Magowan held, owned, occupied, cultivated, and controlled said land adverse to all the world, by himself and tenants, up to this death, which occurred about the — day of ——, 1857, and that his children and heirs-at-law continued to hold, cultivate, and controll said land until the 18th day of February, 1867, adverse to all the world, when they sold and conveyed the same to these defendants and their codefendants, Nathaniel Williams. Said deed is recorded in the Powell county clerk's office. An official copy of same is filed herewith as a part hereof, marked "C No. 2." That John T. Magowan, James Asa Magowan, Carrie Magowan, James W. Brooks, and E. A. Brooks, who made said deed to these defendants, are the only children and heirs-at-law of said James P. Magowan, deceased.

106 That the said Magowans put these defendants in possession of said land, and they have held, occupied, cultivated, and controlled said land adverse to all the world, by themselves and tenants, to the full extent of said deed boundary, and all the time holding and claiming to a plainly marked and well-defined line and boundary; that they claim said land by said deeds and by actual adverse possession.

These defendants, further answering, say that they and their codefendants, Williams and O. D. Forkner, were in the actual adverse possession of all of said tract of land on and before the 13th day of September, 1865, the date of the pretended deed and sale from Daniel Breck to N. C. Morse and others, and that said deed, if it covers and

includes any part of said land, which is denied, is champertous, null and void, and passed no title to said Morse and others; and they deny the plaintiff's right to recover against them in this action. They say that said deed is void for uncertainty; also that the deed from Duckham to Breck is void for uncertainty; they deny that the deed from Thomas Duckham to James P. Magowan is void; on the contrary, they affirm that it is a valid deed and passed a good title to said Magowan; they deny that the deed from Duckham to Green Hall is void; on the contrary, they affirm that it passed a good title to said Hall; they deny that the deed from the said Duckham to David Shawley is void; on the contrary, they affirm that it passed a good title to said Shawley. They claim no land or possession in the Carnan patent outside their boundary.

These defendants, further answering, say that the plaintiff's cause of action, if any he ever had, which is denied, accrued to his ancestor, Nathan C. Morse, or to his vendors more than seven, and more than ten, and more than fifteen, and more than thirty, and more than forty years before the institution of this suit; and that
107 said cause of action, if any ever existed (which is denied), is stale and barred by the lapse of time and the statute of limitation in such cases made and provided, and they plead and rely upon the staleness of the plaintiff's claim, and the lapse of time, and the statute of limitations to defeat the plaintiff's action and as a bar to plaintiff's right to recover in this action.

Further answering, these defendants say that they or their vendors were, viz., John T. Magowan, M. C. Magowan, James Asa Magowan, Carrie C. Magowan, James W. Brooks, and E. A. Brooks, were in the actual adverse possession of the whole boundary claimed by these defendant- at the time of the pretended sale and conveyance by Daniel Breck to the said Nathan C. Morse and others, under which the plaintiffs asserts title, and that the said pretended sale and conveyance and deed are champertous and absolutely null and void, and passed no title or color of title to said Morse and others to any land claimed by these defendants, and that said Morse never had any title or color of title to any land claimed by these defendants.

These defendants, further answering, say that they and those under whom they hold and claim said lands have been in the quiet, peaceable, actual, continuous, undisturbed, and adverse possession of same for more than forty years last past, and have continuously, all the time, owned, held, cultivated, used, occupied, and controlled, by themselves and tenants, all of said land claimed by them adverse to all the world, all the time holding and claiming and controlling the same up to a well-marked and well-defined boundary, the same hereinbefore set out, under the deeds aforesaid and by actual adverse possession; and they say that the plaintiff's cause of action, if any he ever had (which is denied), is stale and barred by lapse of time and the statutes of limitation, which they plead and rely
108 upon to defeat the plaintiff in this action; that the facts stated in this answer are true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable

court shall direct, and pray hence to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

H. C. LILLY,
Solicitor for Defendants.

The defendants John Jay Anderson, Josiah Anderson, John S. Wyatt, and Presley A. Howard say the statements contained in the foregoing answer are true to the best of their knowledge and belief.

This 9th day of June, 1884.

JOHN JAY ANDERSON.
JOSIAH ANDERSON.
P. A. HOWARD.
JOHN S. WYATT.

UNITED STATES OF AMERICA, }
District of Kentucky. }

At the town of Stanton, in the county of Powell, State of Kentucky and district aforesaid, this the ninth day of June, in the year 1884, personally appeared before me, J. Boone, clerk of the Powell county court, the above-named John Jay Anderson, Josiah Anderson, John S. Wyatt, and Presley A. Howard and made oath that the facts set forth in the foregoing answer so far as they purport to be stated of their own knowledge are true, and so far as they purport to be stated on information and belief they believe them to be true.

Given under my hand this 9th day of June, 1884.

J. BOONE,
Clerk of the Powell County Ct.

109 The replication referred to, taken from case No. 1289, was and is in words and figures as follows, viz:

Circuit Court of the United States, District of Kentucky.

N. C. MORSE }
vs. } 1289.
CHAS. EVANS. }

The replication of N. C. Morse, complainant, to the answer of John Jay Anderson, Si Anderson, P. A. Howard, and John S. Wyatt, defendants.

This repliant, N. C. Morse, saving and reserving unto himself all and all manner of advantage and exceptions to the manifold insufficiencies of the said answer, for replication thereunto says—

That he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in said answer contained material or effectual in the law to be replied unto, confessed and avoided, traverse-, or denied, is true; all which matters and things this repliant is and

will be ready to aver and prove as the honorable court shall direct and humbly prays as in and by his said bill he hath already prayed.

GEO. R. McKEE,
Complainant's Solicitor.

The decree referred to, taken from case No. 1289, was and is in words and figures as follows, to wit:

N. C. MORSE
vs.
CHARLES EVANS *et al.* } No. 1289.

110 This cause being submitted and heard on the bill, answers, replication, and exhibits, and the court now being sufficiently advised, it is ordered and decreed that complainant's bill be, and same is, now dismissed for want of equity.

It is considered by the court that the complainant's remedy, if any he has, is at law and not in equity, and therefore this, as a court of equity, has no jurisdiction to grant him the relief prayed for or any relief. It is further ordered that the dismissal of the bill is without prejudice to such action at law as complainants shall think proper to bring or any action for the partition of any land not in the adverse possession of any of the defendants named below.

It is further adjudged that the defendants, John Jay Anderson, Josiah Anderson, P. A. Howard, John S. Wyatt, O. D. Forkner, Darious Congleton, Wesley Spencer, Moses Spencer, Nathan Williams, James H. Garrett, and G. B. Wills, go hence without day and recover of the said complainants, Nathan C. Morse, their costs herein expended, for which execution may issue.

The defendants read as evidence deeds from John T. Magowan and others, dated February 18th, 1867, to John Jay Anderson and others; Orlando D. Forkner to Joel Chenault and others, dated April 4th, 1878; David Shawley and wife to O. D. Forkner, March 25th, 1853; Thomas Duckham to Green Hall, September 11th, 1841; Thomas Duckham to David Shawley, December 16th, 1841, and the deed from Thomas Duckham to James P. Magowan, dated September 9th, 1841.

111 The deed from John T. Magowan and others, dated February 18th, 1867, to John Jay Anderson and others, referred to above, was and is in words and figures as follows:

This indenture made and entered into this 18th day of February, 1867, by and between John T. Magowan, James A. Magowan, William C. Magowan and his wife Carrie Magowan, J. W. Brooks and his wife, Anna E. Brooks, parties of the first part of Montgomery county, Kentucky and John Jay Anderson, Presley A. Howard, Josiah Anderson, Paul C. Bedford, John S. Wyatt and Nathaniel Williams, parties of the second part of same county and State, witnesseth:

That for and in consideration of the sum of sixteen hundred and fifty dollars cash in hand paid, receipt of which is hereby acknowledged, the parties of the first part have this day bargained, sold and conveyed and by these presents do bargain, sell and convey unto the parties of the second part, the following tract and parcel of land hereinafter described, unto John Jay Anderson, one-third part of the same; unto P. A. Howard, one-third part thereof, and unto John S. Wyatt, Nathan Williams, Josiah Anderson and P. C. Bedford the remaining third thereof, said tract of land is bounded as follows: Commencing at a linn tree on the south side of Red river original corner to Jonas Forkner, thence nearly north up to the top of the cliffs to said Forkner's line, thence with said Forkner's line along the ridge dividing Indian creek and Edwards branch thence with Magowan's original line with the meanderings of the cliff on Indian creek side to a white oak, marked "H. A. B.," corner near the the waterfall on the Indian creek side at or near Magowan's original line, thence with a marked line nearly due east to two chestnut oaks, marked "H. A. B." on one of the left-hand branches of Wolf Pen branch near a waterfall and Bear Pen, thence with the meanderings of the cliff of Wolf Pen with Joe Chamber's line
112 running nearly south to a poplar, corner near Red river, thence crossing the river with said Chamber's line to the top of the cliff to Joe Chamber's line, thence with Magowan's original line up to the cliff and thence to the head-waters of Gray's branches with Magowan's original line wherever it may be on the dividing ridge or on the top or edge of the cliff, dividing the north and middle forks of Red river, thence with Magowan's line on the divide or top of the cliffs wherever the line may run between north and middle forks of Red river to Jonas Forkner's line, thence with said Forkner's line to the beginning, supposed to contain twenty-five hundred acres, be the same more or less. To have and to hold the aforesaid tract of land unto the said parties of the second part, their heirs and assigns forever, in the proportion heretofore named and the parties of the first part hereby convey the same to said second parties with the express understanding and agreement that if said land should be taken away from said parties of the second part by any one under a prior or better title, the parties of the first part hereby bind themselves to refund the purchase-money without interest and the parties of the first part are to have the right of way over the land herein conveyed in going to and from their other lands, and the parties of the second part to have the same privilege over the first parties' land lying adjacent to the lands herein conveyed.

In testimony whereof said first parties hereto set their hands and seals the — day of —— and date heretofore written.

JOHN T. MAGOWAN.
JAS. ASA MAGOWAN.
E. A. BROOKS.
W. C. MAGOWAN.
JAS. W. BROOKS.
CARRIE D. MAGOWAN.

113 STATE OF KENTUCKY, } *sct:*
Montgomery County, }

I, J. R. Garrett, clerk of the Montgomery county court, do certify that the foregoing deed of conveyance from John T. Magowan and others to John Jay Anderson and others, which I do certify is stamped with two dollars internal revenue stamps, was, on the 18th day of February, 1867, produced to me in said county and acknowledged before me by John T. Magowan, James Asa Magowan, W. C. Magowan, James W. Brooks, and Anna E. Brooks, wife of James W. Brooks, to be their act and deed, and on this day was acknowledged — me in said county by Carrie D. Magowan, wife of W. C. Magowan, and to be her act and deed.

Whereupon said deed is duly recorded in my office.

Given under my hand this 23rd day of Feby, 1867.

J. R. GARRETT, *Clerk.*

STATE OF KENTUCKY, } *sct:*
Powell County, }

I, W. H. Harrison, clerk of Powell county court, do certify that the foregoing instrument of writing from John T. Magowan and others to John Jay Anderson and others was, on the 24th day of November, 1874, produced to me in my office by the parties and ordered to be recorded (it having been heretofore acknowledged and recorded in the Montgomery court), which is done accordingly, together with the foregoing and this certificate.

Given under my hand this 24th day of November, 1874.

W. H. HARRISON, *Clerk.*

STATE OF KENTUCKY, } *sct:*
County of Powell, }

I, J. Boone, clerk of the Powell county court, do hereby certify that the foregoing is a true copy of a deed from John T. Magowan and others as appears of record in my office.

114 Given under my hand this 5th day of March, 1883.

J. BOONE, *C. P. C. C.*

The deed from Orlando D. Forkner to Joel Chenault and others, dated April 4th, 1878, referred to above, was and is in words and figures as follows, viz:

An article of agreement made this day, April 4th, 1878, between Orlando D. Forkner of the county of Powell and State of Kentucky and Joel Chenault, John Jay Anderson, John S. Wyatt and Nathan Williams of the county of Montgomery and State aforesaid, that O. D. Forkner of county and State aforesaid has this day sold and conveyed and do- by these presents sell and convey to said Chenault, Anderson, Wyatt and Williams all the right title and interest the said Forkner has to the land lying and being in said county of Powell, adjoining the lands of Chenault, Anderson &c., on the dividing waters of the north fork and middle fork of Red river. Forkner conveys the lands inside of the survey made and line marked on said dividing tracts of the north and middle forks of Red

river to said Chenault, Anderson, Wyatt and Williams for the sum of fifty dollars, to the said Forkner in hand paid, the receipt of which is hereby acknowledged and the said Forkner conveys all the lands to the tops of the hills and ridges and the water dreaning into the north fork of Red river up to the line surveyed by Hunter, four — five years ago and marked then as the line between Forkner, Chenault, Anderson, Wyatt and Williams, and this fifty dollars is paid to settle the disputed line. Forkner claiming to the cliff of the north fork and Chenault, Anderson, Wyatt and Williams claiming to tops of hills and ridges and all the waters running into the north fork of Red river. Forkner conveys all interest he has ac-
115 quired from Shawley, by deed, or any other person so far as his line joins the said Chenault, Anderson, Wyatt and Williams, and it is understood and agreed by Forkner, Chenault, Anderson, Wyatt and Williams, that the line run by Hunters is the correct line between them and no other line is agreed to from and after this date.

In testimony whereof we sign our names this day and date above written.

O. D. FORKNER.
MARY E. FORKNER.

STATE OF KENTUCKY, } *sct:*
Powell County, }

I, Romulus Jackson, clerk of the county court for the county and State aforesaid, do certify that the foregoing instrument of writing was on the 9th day of April, 1878, acknowledged by O. D. Forkner to be his act and deed; also the acknowledgment of Mary E. Forkner, his wife, separate and apart from her husband, to be her act and deed, before me, N. D. Merrill, deputy clerk, Powell county; all of which has been duly recorded, together with this certificate, for the purposes therein named.

Given under my hand this 11th day of April, 1878.

ROMULUS JACKSON, *Clerk.*

STATE OF KENTUCKY, } *sct:*
County of Powell, }

I, J. Boone, clerk of the Powell county court, do certify that the foregoing is a true copy of a deed from O. D. Forkner and Mary E. Forkner, his wife, to John Jay Anderson & others, as appears of record in my office.

Given under my hand this the 5th day of March, 1883.

J. BOONE, *Clerk,*
By IS. BOONE, *D. C.*

116 The deed of David Shawley and wife to O. D. Forkner, dated March 25th, 1853, referred to above, was and is in words and figures as follows, viz:

This indenture, made and entered into this 25th, day of March 1853, by and between David Shawley and Elizabeth Shawley, his wife, of the one part and Orlando Forkner and Aubrey D. Forkner of the other part, witnesseth:—That for and in consideration of the

sum of one dollar in hand paid, the receipt of which is hereby acknowledged, has bargained and sold a certain tract or parcel, or boundary of land lying and being in the county of Powell and State of Kentucky, between the middle and main forks of Red river, and bounded as follows, to wit:—Beginning on a pine tree on the left-hand side of the Clear branch at Bryant's corner, thence with the cliff of the Clear branch to the road that leads to Stillwater, at the three white pines, thence with the cliff of main Red river until it comes where John Carnan's line crosses the ridge, thence back with Carnan's to Shawley's line and Carnan's corner on the middle fork, containing one thousand acres, more or less. To have and to hold unto the aforesaid Orlando D. Forkner and Aubrey D. Forkner, their heirs and assigns, with appurtenances thereunto belonging, free from the claim or claims of David Shawley and Elizabeth Shawley, his wife, and their heirs and assigns forever, they the said David Shawley and Elizabeth Shawley his wife, hereby conveys unto aforesaid Orlando D. Forkner and Aubrey D. Forkner a quitclaim deed to said one-thousand-acre tract of land be the same more or less.

In testimony whereof we have hereunto set our hands and affixed our seals this 25th day of March, 1853.

DAVID SHAWLEY. [SEAL.]
her
ELIZABETH x SHAWLEY.
mark.

117 STATE OF KENTUCKY, } *set:*
Powell County, }

I, Jas. H. Schroll, clerk of said county, certify that the deed from David Shawley and Elizabeth Shawley, his wife, to Orlando D. Forkner and Aubrey D. Forkner was produced to me in my office and acknowledged by the said David Shawley to be his act and deed; and the said Elizabeth Shawley, being by me examined privily and apart from her said husband, and declared that she did willingly and freely sign, seal, and deliver said writing and wished not to retract it, and acknowledged the same, again shown and explained to her, to be her act and deed and consented that the same might be recorded; whereupon the said deed, together with this certificate, hath been duly admitted to record.

Given under my hand this 25th day of March, 1853.

JAMES H. SCHOLL, *Clerk.*

STATE OF KENTUCKY, } *set:*
Powell County, }

I, Tho. C. Judy, clerk of Powell county, do certify that the foregoing deed of conveyance from David Shawley and Elizabeth Shawley, his wife, to Orlando D. Forkner and Aubrey D. Forkner was recorded heretofore in the Powell county clerk's office, Book No. 1, page 16, and was destroyed by fire, spring 1864, at the burning of the public buildings, and is now recorded again for the second time.

Given under my hand this 17th day of September, 1872.

THO. C. JUDY, *Clk.*

STATE OF KENTUCKY, } *set:*
County of Powell, }

I, J. Boone, clerk of the Powell county court, do certify that the foregoing is a true copy of a deed from David Shawley and Elizabeth Shawley, his wife, to Orlando D. Forkner and Au-
118 brey D. Forkner, as appears of record in my office.

Given under by hand this 12 day of January, 1885.

J. BOONE, *Clerk.*

The deed of Thomas Duckham to Green Hall, of date September 11th, 1841, referred to above, was and is in words and figures as follows, viz:

This indenture, made and entered into this eleventh day of September 1841, between Thomas Duckham of Cavil county Virginia, of the one part and Green Hall of Montgomery county and State of Kentucky of the other part, witnesseth:—That for and in consideration of twenty-five dollars in hand paid, the receipt hereby I do acknowledge, I have bargained and sold and by these presents hath bargained and sold unto the said Hall a certain tract or boundary of land in the county of Montgomery on the waters of the middle fork of Red river, beginning one mile up the Clear branch at a line of Bryant's sold by Duckham, thence up the said branch to the head of the branch and to the heads of all the branches that runs into the same and to the top of the cliff round on each side, containing one thousand acres more or less and the said Duckham agrees and binds himself, his heirs, executors, &c., to defend the said land in a general warrant deed to defend the same from all claims whatsoever and to pay back the said purchase-money if ever the said land should be lost in law or equity. Reserve all mines and minerals.

THOS. DUCKHAM. [SEAL.]

COMMONWEALTH OF KENTUCKY, } *To wit:*
Montgomery County, }

I, James Howard, clerk of the county court for the county aforesaid, do certify that this deed from Thomas Duckham to Green
119 Hall was this day produced to me in my office and acknowledged by the said Thomas Duckham to be his act and deed; whereupon the said deed, together with the foregoing certificate, hath been duly admitted to record in my office.

Given under my hand this 18th day of February, 1841.

JAMES HOWARD, *Clerk.*

STATE OF KENTUCKY, } *set:*
County of Montgomery, }

I, T. W. Priest, clerk of the Montgomery county court, certify the foregoing instrument of writing to be a true copy of the deed from Thos. Duckham to Green Hall, as shown by the records of my office, Deed Book No. 20, page 1.

Given under my hand this March 9, 1883.

T. W. PRIEST, *C. M. C. C.*

The deed of Thomas Duckham to David Shawley, of date December 16th, 1841, referred to above, was and is in words and figures as follows, viz:

This indenture made and entered into this 16th., day of December, 1841, between Thomas Duckham of *Caul* county Virginia of the one part and David Shawley of Montgomery county and State of Kentucky of the other part, witnesseth: That for and in consideration of the sum of fifty dollars in hand paid, the receipt whereof is hereby acknowledged, has bargained and sold a certain tract or boundary of land lying and being in the county of Montgomery and between the middle and main fork of Red river and bounded as follows, to wit: Beginning on a pine tree on the left-hand side of Clear branch at Bryant's corner, thence with the clefts of the Clear branch to the narrows to the road that leads to Stillwater at three white pines, thence with the cliffs of main Red river, until
120 it comes where John Carnan's line crosses the ridge, thence back with Carnan's to Shawley's line and Carnan's corner on the middle fork, containing one thousand acres more or less, and the said Thomas Duckham will warrant and ever defend the said piece of land against all claims whatsoever to the said David Shawley, his heirs or assigns, passing one-half of all mines and minerals in the bowels of the earth.

In witness hereof I have set my hand and seal.

THOS. DUCKHAM. [SEAL.]

his
WILLIAM x GRAY.
mark.

his
JOHN x SHAWLEY.
mark.

STATE OF KENTUCKY, }
Montgomery County, } *set:*

I, James Howard, clerk of the county court for the county aforesaid, do certify that this deed, from Thomas Duckham to David Shawley, was this day produced to me, in my office, by the said grantor and acknowledged by the said Thomas Duckham to be his act and deed; whereupon said deed, together with this certificate, hath been duly admitted to record in my office.

Given under my hand this 7th day of June, 1842.

JAMES HOWARD, *Clerk.*

STATE OF KENTUCKY, }
Montgomery County, } *set:*

I, Thomas W. Priest, clerk of the Montgomery county court, certify that the foregoing is a true copy of the deed from Thomas Duckham to David Shawley, as shown by the records of my office, Deed Book No. 20, page 185.

Witness my hand this May 16th, 1884.

Att.: T. W. PRIEST, *Clerk.*

121 The deed from Thomas Duckham to James P. Magowan, dated September 9th, 1841, referred to above, was and is in words and figures as follows, viz:

This indenture, made and entered into this 9th day of September 1841 by and between Thomas Duckham of the county of Cabell and State of Virginia of the one part and James P. Magowan of the county of Montgomery and State of Kentucky of the other part, witnesseth: That whereas, the said Thomas Duckham claims title to all the land situate on Red river and its tributery streams in Montgomery county, which is included in the patent of John Carnan for ten thousand acres, and whereas James P. Magowan has claim to all the land on Red river, beginning at the marked lynn on the side of a branch, which is a coener of Jonas Forkner or it is at the west end of the bottom adjoining said Forkner at the yellow lynn which may not be a corner but it is either a line or a corner tree of said Forkner and to run thence on both sides of the river and including the bottoms on all the branches which empty into the said river up to the heads of the branches on each side of said river and to include all the land from said lynn tree up the river to Powell Ros's land and on the south side of Red river up to the Rush branch and including the lands on each side of the river as far as the cliffs and hills and the said parties hereto having agreed to compromise their conflicting claims to said land and have this day settled it. Now for and in consideration of the premises and for the further consideration of the sum of fifty dollars by the said Magowan to the said Duckham in hand paid the receipt whereof the said Duckham doth hereby acknowledge, the said Duckham hath granted, bargained and sold and by these presents does alien, convey and confirm unto him the said Magowan all that
122 tract or territory of land included in the boundaries herein already set forth and described. To have and to hold same to the said James P. Magowan and his heirs forever, together with all the appurtenances thereunto belonging or in anywise appertaining and the said Thos. Duckham doth covenant and agree that he will for himself and his heirs warrant and defend the title of said land and his heirs forever against himself, his heirs and all persons claiming from, by or through him, and if said land shall ever be lost by any better or superior claim then said Duckham binds himself to refund the said sum of fifty dollars without interest.

In testimony whereof I have hereunto set my hand and seal this day and date above written.

THOS. DUCKHAM. [SEAL.]

N B.—It is distinctly understood by the parties hereto that said Duckham reserves to himself, and excepts all the rights, privileges to mine and coal in all of said land and all the minerals or coal banks and the privileges of ingress, egress and regress on said land to work said mines or coal banks and the use of any timber on said land to work said mines and coal banks and use said timber in any way he may think proper not to exceed one-half of the timber are reserved to said Duckham and excepted out of said sale to said

Magowan. Witness our hands and seals this day and year first herein written.

THOS. DUCKHAM. [SEAL.]
J. T. MAGOWAN. [SEAL.]

COMMONWEALTH OF KENTUCKY, *Montgomery County,* } *To wit:*

I, James Howard, clerk of the county court for the county aforesaid, do certify that this deed from Thos. Duckham to James
123 P. Magowan was this day produced to me, in my office, by the said grantor and acknowledged by the said Thomas Duckham to be his act and deed; whereupon the said deed, together with the foregoing certificate, hath been duly admitted to record in my office.

Given under my hand this 9th day of September, 1841.

JAMES HOWARD, *Clerk.*

STATE OF KENTUCKY, *Montgomery County,* } *set:*

I, Thomas W. Priest, clerk of the Montgomery county court, certify that the foregoing is a true copy of the deed from Thomas Duckham to James P. Magowan, as shown by the records of my office, Deed Book 19, page 476.

Witness my hand this May 16th, 1881.

T. W. PRIEST, *Clerk.*

Defendants also gave evidence to the jury conducing to prove that said Magowan was in the possession of the said land so conveyed by Duckham at and anterior to the deed of September 9th, 1841, claiming it as his own adversely to Duckham, and that defendant John Jay Anderson claimed the land under said James P. Magowan, deceased, and read a copy of his will and probate.

Said will and probate herein referred to are in words and figures as follows, to wit:

I, James P. Magowan, a citizen of Montgomery county, Kentucky, being now in my fifty-seventy year, and being of sound mind and disposing memory, do make and publish the following as my last will and testament, hereby revoking all other wills and testaments heretofore made by me.

124 First. I will and direct that my funeral expenses and all my just debts be paid as soon after my death as shall be practicable.

Second. I give to my beloved wife, Mrs. Eliza Jane Magowan, as much of my household goods, furniture and kitchenware as she may choose to retain, her buggy and buggy horse, her saddle mare and riding equippage; four work-horses or mules as she may prefer; two yoke of oxen and a wagon or cart; all necessary farming utensils to cultivate her farm; eight good milk cows; as many hogs as will be needed to make her killing hogs and a supply of brood sows; a number of sheep suitable for the size of her farm and provisions enough to supply her family for one year, including corn, hay wheat

and provender for her stock, and one thousand five hundred dollars in money to be paid to her in installments as she may need it. In addition to the foregoing property I give to my said wife for and during her life, and in lieu of her dower in my estate my farms situate on the right-hand side of the road leading from Mt. Sterling to Owingsville, and a small piece of land on the other side of said road, so as to include all the land I purchased of Hone K. Farraw, upon which farm is to be erected a good and neat brick dwelling-house, of the size, plan and dimension as indicated by the foundation as laid off and already commenced, the whole to be two stories high, on a good rock foundation, and to be completed in a handsome, fashionable and good workmanlike manner, the cost of said building to be paid for out of my estate. In addition to which I give her during her life all the cleared land and improvements on the farm on Little Slate creek, known as the Slate Lick farm with the privilege of taking as much firing wood and timber from the uncleared part of said farm as may be necessary to supply that place with fire-wood
125 and timber to keep it in repair, and as much timber from that place as she may need to keep the Farrow farms in repair, but certain of my slaves which I shall hereafter name are to remain on the Slate Lick farm for purposes herein set forth. I give to my beloved wife during her life the following slaves, a man named, Billy, one named John, one Henry, one named Lewis, Arthur, and a boy named Jordan, a woman named Suckey, one named Cloe, one named Patsey and a negro girl 11 or 12 years old named Louisa, and if any of said slaves should become disobedient or rebellious, my wife shall have full power to sell such slaves or slaves and the money arising from such sale is to be loaned out during her life and the interest she is to use as she pleases, but the principal is to go to my four children in equal portions at her death. The foregoing property I have given to my beloved wife, in lieu of her dower in my estate, and at her death the land and slaves which I have given her for and during her life are to go to my children in the manner and on the terms that I shall hereinafter prescribe. It is my wish that my son John P. Magowan live with his mother during her life. I will and direct that my wife remain in my mansion house until the dwelling-house is completed for her on the Farrow place.

Third. To my son William C. Magowan I give for and during his life all that part of the farm which I purchased of Mr. Otho Barnes, which lies on the north side of the great road leading from Mt. Sterling to Spencer meeting-house, also all that portion of a tract of land lying on Spenser's creek conveyed to me by my father, the late James S. Magowan, which lies on the north side of said road leading from Mt. Sterling to Spencer meeting-house; also twenty acres more land, part of the said Spencer farm and bounded as follows: Beginning at the corner between mysel- and the heirs
126 of Samuel D. Everett, thence S. crossing Spencer creek and running up the bluff the proper distance to make the quantity in good form, thence an east cou-se to the point of the bluff, thence a north cou-se crossing the creek again and running to the

Spencer road thence with said road to the beginning, so as to make twenty acres, which I consider necessary to furnish William's farm with wood and timber. These and all other lands which I may hereafter give to my said son *are* which may be purchased for his use, with means from my estate, I give to him to use and enjoy during his life in the fullest manner and he is not to be responsible for any waste he may commit on said lands or any of them and upon his death all of said lands are to go to his children and their descendants, just as if the fee simple in said lands had been in my said son and he had died intestate, but if at his death, he should leave no child or children or descendants of a child or children, then said lands are to pass to his brothers and sisters and their heirs. If my said son should be of opinion that it would be to his interest to sell said lands or any part thereof, he has full power and authority to do so, provided the proceeds of such sale shall be reinvested in other lands and the title thereto is so taken, as to secure to himself only a life estate therein, and upon his death said lands shall pass to the same persons and in the same way that the lands herein given him are to pass, and the purchaser must see to the reinvestment of the purchase-money or the lands given by me to my said son must be held responsible. I give to my said son William C. Magowan the following slaves Fred, Marshall, a boy names Jerry, a negro woman named Jane and her three daughters Florence, Mary and Ellen, and another girl named Harriet, daughter of my negro woman Mary, to him and his heirs forever. I hold a note on Mr. J. Hanks and his security William Gatewood for one thousand dollars now bearing interest; I give said note with its accruing interest to Eliza B. Magowan infant daughter of my son William C. Magowan, the money to be loaned out and made productive until said Eliza B. Magowan marries or arrives at twenty-one years of age. Upon the happening of either events the principal and interest are to be paid over to her, but if she should die before she receives the money leaving no child her surviving, her father is to have the money.

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Fourth. To my son John T. Magowan, I give for and during his life, my farm near the town of Mt. Sterling, called the Hinkston farm to a part of which I derived title through the will of my father, the late James S. Magowan, and the balance of which I purchased of Mr. Benjamin Tipton, the two parcels making about 184 acres. I also give to my said son John T. Magowan, the tract of land on Spencer's creek called the Cheatham place, containing about 137 acres, all the unsold land which I purchased of Mr. Benton Kemper which I suppose to be about 55 acres and 25 acres off of the Spencer farm conveyed to me by my father, the late James S. Magowan, being that part of said farm known and called the Meyers hill inclosure, and if that inclosure does not contain 25 acres, the lines are to be extended north so as to include that quantity.

These and all other lands which I may hereafter give to my said son John T. Magowan or which may be purchased for his use with means from my estate, I give to him to use and enjoy during his life in the fullest manner, and he is not to be responsible for any

waste he may commit in said lands or any part of them, and upon his death all of said lands are to go to his children and their descendants, just as if the fee simple in said lands had been in my said son and he had died intestate; but if at his death he should leave no child or children or descendants of a child or children, him surviving, then said lands are to pass to his broth- and sister
128 and their heirs. If my said son John T. Magowan should be of the opinion that it would be to his interest to sell said land or any part thereof, he has full power and authority to sell, provided the proceeds of such sale be reinvested in other lands and the title thereto be so taken as to secure to him a life estate in said lands and upon his death said lands shall pass to the same person and in the same way, that the lands herein given him are to pass, and the purchaser must see to the reinvestment of the purchase-money, or the lands herein given to my said son by me must be held responsible. I give to my said son John T. Magowan the following slaves viz: Mabens, Gilbert, Asa, a boy named Dave, Louisa daughter of my negro woman Nellie, and the two girls Priscilla and Elizabeth daughter*w* of my negro woman Jane, to him and his heirs forever.

Fifth. To my son James Asa Magowan I give for and during his life, the place I purchased of Major Ringo, upon which is situate my mansion house; the place contains about 180 acres; the balance of the place called the Spencer farm not heretofore disposed of containing about 145 acres, and that portion of the farm I purchased of Mr. Otho Barnes which lies on the south side of the great road leading from Mt. Sterling to Spencer meeting-house, containing about four or five acres. These and all other lands which I may hereafter give to my said son James Asa Magowan *are* which may be purchased for his use with means from my estate I give to him to use and enjoy during his life in the fullest manner, and he is not to be responsible for any waste he may commit on said lands or any part of them, and upon his death all of said lands are to go to his children and their descendants just as if the fee simple in said lands had been in my said son and he had died intestate, but if at his death he shall leave no child or children or descendants of a
129 child or children, him surviving, then said lands are to pass to his brothers and sisters and their heirs. If my said son James Asa Magowan should be of the opinion that it would be to his interest to sell said land or any part thereof, he has full power and authority to do so; provided the proceeds of such sale be reinvested in other lands and the title thereto be so taken as to secure to him a life estate in said lands, and upon his death said lands shall pass to the same persons and in the same way that the lands herein given him are to pass, and the purchaser must see to the reinvestment of the purchase-money, or the lands herein given to my said son by me must be held responsible. I give to my said son James Asa Magowan the following slaves, namely: Charlie, Sandford, Wallace, a boy named Benj., a negro woman named Margaret and her three children Alice, Sarah Jane, and Milton and a girl named Manda, daughter of my woman Jane, to him and his heirs forever.

Sixth. Having given to my wife and my three sons my most val-

uable lands and not having left for my daughter Anna Eliza Magowan such a farm as I wish her to have when she will need it I will and direct that my executors immediately after my death set apart fifteen thousand dollars in money to be by them loaned out at eight per cent. per annum, to good, solvent and honest men, who will pay the eight per cent. interest as they promise it, and the interest to be collected and paid over to her, my said daughter at the end of each year for her own use and benefit, so long as she remains single, but so soon as she marries, or as soon thereafter as the fifteen thousand dollars, set apart as above directed, can be collected or a sufficient part thereof to make a payment, a farm of not less than three hundred acres of good rich land in the county of Montgomery Ky., or some other county of rich good land in said State with
130 comfortable and convenient improvements, is to be purchased for my said daughter's use and benefit during her life, the title to the land which I direct to be purchased for the use and benefit of my said daughter is to be so taken as to secure to her the fullest use and enjoyment of the same during her life, and at her death said land is to pass and go to the heirs of her body just as such heirs would take if she had the fee simple of the estate in said land, under the laws of descent, but if my said daughter should at her death leave no child, children or descendants of a child then said claim is to pass and go to my three sons herein named and their heirs forever. If the fifteen thousand dollars set apart for the purchase of a farm for my daughter, such as I have described herein should not be sufficient to purchase such a farm as I wish her to have, an additional sum is to be added from the proceeds of the sale of property, and other sources, to make up enough to buy her a farm, and I wish her to have a farm as nearly equal in value to the farms I have given each of her brothers, as may be, as I wish equality to prevail in the distribution of my estate amongst my children. I give to my said daughter Anna Eliza Magowan, during her life the following slaves, viz: a woman name- Nelly, one named Violet, one named Rose and one named Amy, a boy named Abe or Abraham, one names John Wesley, one named Joe and one named Dick the last two being sons of my woman Jane, to have and to hold said slaves and their increase, to her exclusive use and benefit during her life; and at her death said slaves are to pass and go precisely as I have directed the land which is to be purchased for her to go.

Seventh. My Slate Lick farm was given to me by my father, it was the retired home of his old age and I feel a strong attachment for it, and desire that it shall not be sold out of my family, I
131 believe it is a healthy location, and consider it valuable for the quantity of easting timber on it, I give that place, together with all the adjoining tracts of land, all of which constitute what is called the Slate Lick farm, to my four children herein named, to be kept, owned and enjoyed by them jointly, subject however to the life estate of their mother in the improved part of the land, with the privilege of getting wood and timber from the un-

cleared part of that land, as provided in the second clause of this will.

Believing that those lands will become much more valuable than they now are, on account of the great quantity of timber growing upon said lands, and will be of great value to my children by supplying them with timber and lumber, I repeat, that those lands are not to be sold out of my family and hope that each one of my children will retain the interest in said lands as I have given them during their lives, and at the death of my children or either of them, his or her part of said land is to pass as the other lands I have given them will go by the provisions of this will, if however any one or more of my children should not be satisfied to keep her, his, or their parts of said lands, those desiring to sell, are required to sell to some one of my children and the money arising from the sale of such interest must be reinvested in lands and the title so taken as to secure to him or her a life estate and upon their death to go to their heirs; and it is my will that my negro man Willis shall remain on the Slate Lick place as I have permitted him to do since my father's death, controlling his own time and to take care of that place for the benefit of my wife and children and my two negro women, Eliza and Mary are to remain on the place with Willis and the negro children who are there are all to remain there until they arrive at an age when they will be serviceable to
132 my children and then they are to be divided, equally divided between my three sons and my daughter, except the boy Moses, who is to remain with his father Willis to aid him in taking care of said estate and to labor there for the benefit of my wife and children, until he is 14 or 15 years old, and it is my wish that none of these negro-s should be sold.

Eight. My storehouse and the rooms attached thereto in Mt. Sterling are to be rented out annually, and the rents to be collected annually and put in with other monies to raise a fund to pay legacies, debts &c., or if my executors should be of opinion that it would be to the advantage of my children to sell said houses and the grounds upon which they are situate they are fully authorized to make the sale and conveyance of the same, the money arising therefrom to be applied as I have directed the rents to be applied; and all my lands on the east side of Mill creek in Bath county, extending up as high as Beaver creek and my tract of land lying near the Olympian springs in said county, I direct to be sold by my executors. And after my wife and children shall have received such of my slaves as I have herein given them, I will and direct that a large portion of the balance of the slaves be sold, to kind, humane masters in Montgomery and adjoining counties in Kentucky, for reasonable and fair prices, and not to be sold to men who buy and sell slaves for speculation to remove to other States, unless they may have committed some crime, in making the sale of such slaves, mothers are not to be sold and separated from small children, nor husbands from their wives, and after the live stock, which I have given to my wife shall be selected by her, and enough is left at the Slate Lick farm to answer the purposes there, all the balance

of my live stock I wish to be put in good condition and then sold by my executors on such terms as they may think best and
133 all the money arising from the sale of the real estate and slaves and live stock as herein enumerated, together with the cash, notes, and cash on hand will create a fund out of which to raise the $15,000.00 for my daughter and the balance over and above that which may be required to pay for a farm for her, if she shall marry, and pay for the house now being erected for my wife, expenses &c.

Ninth. At the death of my wife I give to my four children all the lands and slaves I gave her for life, to be equally divided between my children, and would desire that my sons John T. Magowan, should exchange, upon fair and equitable terms, his lands on Spencer's creek with his brothers William C. and James Asa for their parts of the Farrow farm, and that John should purchase out his sister's part of said farm so that he shall own the whole of that farm; if he should purchase his sister's part of that farm, the money is to be loaned out, and the interest annually paid to her, or it is to be reinvested in other lands suitable for her, and the land and slaves which by this clause of my will I have given to my children upon the death of their mother; I give to them with the same conditions, restrictions and limitations and they are to take the same estate in them, that they take in the lands and slaves I have given them respectively in preceding clauses of this will.

Tenth. All of my slaves who are old, infirm and unable to labor, and are diseased either in mind or body, are to be treated humanely and well provided for; and the expense of taking care of, maintaining and providing for the aged, diseased and afflicted of my slaves, is to be a charge upon my whole estate, and to be bourne by my devisees in joint and equal proportions.

Eleventh. I give to my four children all my lands on Red river and its tributaries, each one to have one-fourth during their lives, and at the death of my children the interest or part of each
134 one is to go to the children or descendants of him or her, and if either of my children should die leaving no child or grandchild, him or her surviving; such child's part is to go to my other children, their heirs &c. And I direct my houses and lots in Mt. Sterling, now occupied by Captain Henry Daniel, be rented out or sold, as my executors may deem best.

Twelfth. After raising and setting apart a sufficient sum to pay for the farm for my daughter, Anna Eliza Magowan, to pay for building a house for my wife, paying all my debts, all money legacies and other charges and the expenses of winding up my business; if any considerable funds should be left on hand, I direct that that fund so left, shall be laid out in the purchase of other lands for the use and benefit of all my children, each one to have an equal part, and in the purchase of said lands they are to be consulted and purchases to be made to suit the convenience and advance the interests of each one of my children, the title to the lands so to be purchased, to be so taken in all cases, as to secure to the child for whom the purchase is made a life estate in their land so purchased, and at his or her death, the title is to vest precisely as the title to the lands given

them, in the previous clauses of this will, are to vest; and as a further declaration of my purpose and intention, I now declare, that all the lands which I have by this my last will and testament, given to my children or which may hereafter be purchased for them and paid for out of funds belonging to my estate, are to be used and enjoyed by them (each one to have his part separately except the Slate Lick and Red river lands) for and during the term of their lives, for their annual and comfortable support, free from all liens and encumbrances whatever; they are to have and enjoy the annual products and profits of said land during their lives, and are not to be deprived of the use and bene-
135 fit of said lands, by contracting debts, or by any sales, mortgages or by anticipating the proceeds and profits of said lands in any way whatever. But I do not intend this as a restriction to prevent either of my sons from selling, conveying or exchanging his lands, provided other lands of equal value are acquired in place of the lands sold or exchanged, and the title to the lands thus acquired are so made and held as to give him or them a life estate in the lands subsequently acquired, remainder to their children and their descendants, if they have any, and if they have none, then to their brothers and sisters and their heirs. I mean that the land purchased with the price for which either of my sons may sell the land I have given them for lands gotten in exchange for lands I have given him is to be held subject to all the conditions, limitations and restrictions to which the land- I have given him are subject; and no title shall pass to his vendee until other lands are purchased in case of a sale and the title secured as herein directed.

Thirteenth. My executors will permit a sufficient number of horses, oxen cattle, hogs and sheep to remain on my Slate Lick farm under the care and superintendence of Willis to carry on said farm, to support the negroes there and to keep the said farm stocked; and all the farming utensils, household stuff, kitchenware &c., now on that place will remain there, and other articles of household and kitchenware and farming utensils are to be supplied as they may be needed, out of my estate. I have in the 7th., clause of this my will, directed that my negro women, Eliza and Mary, should remain at the Slate Lick farm; I now so far change or modify that clause and direct that if Eliza should become rebellious and ungovernable, she for such cause may be removed and although I pre-
fer that Mary should be permitted to remain there; still if
136 my wife and children do insist that she shall be removed and disposed of amongst them, it may be done.

Fourteenth. All the rest and residue of my estate of whatever kind not herein disposed of, I now give to my four children, to be equally divided amongst them and their heirs forever. Having disposed of my whole estate; and having equalized it amongst my children as nearly as I could; I make this my last solemn appeal to them, that they live in peace and harmony with each other, and by all means avoid having any lawsuits amongst themselves; let there be nothing unpleasant or offensive occur, but if unhappily any difficulty or misunderstanding should take place between any

of my children, I enjoin upon them that they meet together and dispassionately and honestly endeavor to adjust the difficulty themselves; but if they should be so unfortunate as to be unable to come to an amicable adjustment of the matter, they must call in some two or more of their friends, intelligent, impartial and independent men to settle the affair, and their determination and award must be final, and the parties must abide by it.

Fifteenth. I direct that a good and substantial stone wall be erected around my family burying ground, the walls are to be so extended as to include ground enough for that purpose, which ground so enclosed is never to be sold.

Sixteenth. My negro woman Mariah is now in bad health, she is to remain at my home place and be provided for and properly nursed. There are more and better negro houses there than on any other of my farms, and I therefore make this provision and the expenses of nursing and taking care of her must be born- equally by all my children.

Lastly. I appoint my two sons James Asa Magowan and
137 John T. Magowan and my frien- B. J. Peters executors of this my last will and testament and having confidence in -heir honesty and integrity, I authorize them or any two of them to make conveyances of any land I have sold or may hereafter sell and not conveyed during my life, and to make all conveyances for lands herein directed to be sold, necessary to invest the legal title in the purchaser I request them to proceed to execute this my will and settle up the whole business as speedily as possible; and I now direct that may said executors be permitted, by the Montgomery county court, to qualify as such without being required to execute bond with security, the security be dispensed with in each case.

In testimony whereof I have hereunto set my hand and seal this 15th day of July, 1858.

Witness-: JAMES P. MAGOWAN. [SEAL.]

R. M. BARNES.
J. C. WELLS.

I, James P. Magowan, do make the following codicil to my last will and testament. I direct my executors to rent out my storehouse in Mt. Sterling, until such time as they can sell it for a fair price, and $75.00 of the rent is to be paid annually to my beloved wife provided, it is rented for $250.00 and the balance of the rent to be equally divided among my four children and if the said storehouse cannot be rented for $250.00, whatever it is rented for, the money is to be divided amongst my wife and children in the same proportion as above indicated; but whene-er my said executors can sell said storehouse and grounds at a fair price, it is to be sold and the proceeds to be applied as heretofore directed in my last will and testament.

138 In testimony whereof I have hereunto set my hand and seal this 19th of Oct. 1858.

Attest: J. P. MAGOWAN. [SEAL.]

J. B. ERWIN.
D. M. BUFORD.

STATE OF KENTUCKY:

Montgomery County Court, November Term, 1858.

A writing purporting to be the last will and testament of James P. Magowan, deceased, together with a codicil thereto annexed, was this day produced in court and proved by the testimony of R. M. Barnes and J. C. Wells, witnesses thereto subscribed, to be the true last will and testament of said decedent, and the codicil thereto annexed was proved to be the act and deed of the said James P. Magowan, deceased, by the testimony of D. M. Buford, a witness thereto subscribed, who also proved the attestation of J. B. Erwin, another subscribing witness to said codicil, which will, together with the codicil, *which will, together with the codicil*, was examined and approved and ordered to be recorded, which is accordingly done.

Attest: E. E. GARRETT,
C. M. C. C.

A copy.
Attest: E. E. GARRETT,
C. M. C. C.

This was all the evidence on either side as to the title of either the plaintiffs or the defendant Anderson.

The court charged the jury that as the defendants denied plaintiffs' title, as well as pleaded affirmatively an adverse possession in themselves and in those under whom they claimed, the
139 plaintiffs must show a good title in themselves to entitle them to recover the land in controversy.

This title could be shown either by proving a good paper title from the Commonwealth down to or in themselves or by the proof of an adverse and continuous possession by themselves or by those under whom they claim for fifteen years before the bringing of the suit; that the deed from John McCalla to Thomas Duckham, dated August 23rd, 1839, which purported to be based upon a sale of John Carnan's 10,000-acre tract of land for taxes, did not of itself prove the necessary steps to make a valid assessment and levy of the taxes for which it was alleged the land was sold, and as there was no other evidence of assessment and levy of the taxes and the sale of the land for said taxes than the recitals of the deed itself, the title of John Carnan did not pass to Thomas Duckham by said deed, and therefore plaintiffs' paper title had failed.

The plaintiffs excepted to this charge and still excepts, and prays that this their bill of exceptions may be signed and sealed, which is done.

Given under my hand and seal this 1st day of April, 1889.
JOHN W. BARR, *Judge*. [SEAL.]

At the request of the counsel of plaintiffs in the case of N. C. Morse, Jr., and others *vs.* John Jay Anderson and others, I make this statement:

I presided at the trial of the case at the December term, 1887, of the court held at Covington. The trial was concluded December

17th, 1887, when the counsel of plaintiffs asked and obtained ten days' time within which to file their bill of exceptions. They tendered to me at Louisville, my residence, a bill of exceptions on the 24th day of December, 1887, which was ordered to be noted of record in the court at Covington, and plaintiffs were given until January 20th, 1888, in which to complete their bill of exceptions so tendered.

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I examined the bill of exceptions thus tendered and declined to sign it, and had counsel notified of the refusal. I sent with my refusal a written memorandum to the clerk at Covington, by way of suggestions to counsel, as an aid in preparing a bill of exceptions. This was about January 13th, 1888, and on the 14th of January, 1888, an order of court was entered extending the time within which another bill of exceptions could be prepared and tendered to the 15th of March, 1888.

Some time during the spring of 1888 and, I think, before March 15th, 1888, one of plaintiffs' attorneys, Hon. Thomas F. Hargis, presented to me at Louisville another bill of exceptions. I examined it and said to him that it did not conform to my suggestions theretofore given. He replied that he thought it did, and that he had a copy of my suggestions which he would send or bring to me, I do not remember which. He also said, as I now remember, that he would come to see me soon and when I was at leisure, and we would talk the matter over and have the bill of exceptions settled. Judge Hargis sent by mail a copy of my memorandum but not the bill of exceptions, that I remember of; but he did not see me further in regard to the matter. I wrote to the clerk of the court to enter an order extending the time to tender a bill of exceptions until the second day of the next term of the court, which was May 15th, 1888, which was done by an order of March 12th, 1888.

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My recollection is not distinct as to the exact time I saw the second bill of exceptions, but I am sure it was prior to the May term, 1888, of the court. I did not see it again, nor did Judge Hargis or any one else appear before me again in regard to said bill of exceptions. The plaintiffs made a motion for a new trial at the December term, 1887, of the court, which motion was taken under consideration and not disposed of until the 3rd day of May, 1888, when the motion as to John Jay Anderson was overruled, and granted as to the other defendants.

On the first day of the regular term, May term, 1888, I entered another order extending the time within which to present a bill of exceptions to the 18th day of June, 1888, and on the 18th day of June, 1888, extended the time to present a bill of exceptions to July 2nd, 1888. (The term of the court continues from term to term, as we construe the law.) Since the commencement of the December term, 1888, plaintiffs' counsel has made various efforts to have the counsel of defendant Anderson present and before me, so that a bill of exceptions might be prepared and signed, but owing to sickness in the family of counsel this has been impracticable until the bill of exceptions now signed by me as of April 1st, 1889.

JOHN W. BARR, *Judge.*

UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

I, Joseph C. Finnell, clerk of the United States circuit court for the sixth judicial circuit, district of Kentucky, at Covington, do hereby certify that the foregoing one hundred and forty-one pages (this included) contain a true and correct transcript of the record and proceedings in the case mentioned in the caption hereof, as was ordered to be copied by the counsel for the plaintiffs, as the
142 same now appears from the files and records of my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Covington, this twelfth day of December, A. D. 1889.

JOS. C. FINNELL,
Clerk U. S. Circuit Court, at Covington.

143 Supreme Court of the United States.

NATHAN C. MORSE, JR., and CHAS. EVANS
vs.
JOHN JAY ANDERSON. } In Error.

Know all men by these presents that we, S. F. B. Morse — ——, are held and firmly bound unto the above-named John Jay Anderson in the sum of six hundred ($600.00) dollars, to be paid to the said John Jay Anderson, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated at Covington, Ky., this twelfth day of December, A. D. 1889.

Whereas the above-named Nathan C. Morse, Jr., and Chas. Evans hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the sixth circuit court:

Now, therefore, the condition of this obligation is such that if the above-named Nathan C. Morse, Jr., & Chas. Evans shall prosecute said writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. F. B. MORSE. [L. S.]
—— ——. [L. S.]

Sealed and delivered in presence of—
JOS. C. FINNELL, *Clerk.*

Approved:
JNO. W. BARR, *Judge.*

Endorsed on cover: Case No. 13,938. Kentucky C. C. U. S. No. 297. Nathan C. Morse, Junior, and Charles Evans, plaintiffs in error, *vs.* John Jay Anderson. Filed January 2, 1890.

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Supreme Court of the United States

NATHAN C. MORSE, jr.,
CHARLES EVANS,
} - Plaintiffs in Error,

vs.

JOHN JAY ANDERSON, - - - - - Defendant.

THOMAS F. HARRIS, of Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

NATHAN C. MORSE, JR. . . . . }
AND
CHARLES EVANS . . . . . } *Plaintiffs in Error,*

vs.

JOHN JAY ANDERSON . . . . . *Defendant.*

This was an action at law brought in 1885 in the Circuit Court of the United States for the District of Kentucky, by the plaintiffs in error against John Jay Anderson, the defendant in error, and others, to recover ten thousand acres of land lying in the counties of Powell, Wolfe and Menifee in the State of Kentucky.

It appears from the record that this land was patented by the Commonwealth of Virginia to John Carnan in 1786, and was afterwards, in 1816, sold for United States taxes due from him, and Thomas Duckham became the purchaser thereof, and, on the 23d day of August, 1839, received a deed therefor from John McCalla, "Collector Internal Revenue District Tax." On the 17th of July, 1838, said Duckham sold and conveyed it to Daniel Breck, Ex-Chief Justice of Kentucky, and said Daniel Breck, on the 13th of September, 1865, sold and conveyed it to N. C. Morse, Sr., who died in the year 1877. His administratrix instituted suit, and said ten thousand acres were adjudged to be sold to pay debts of her decedent, and the plaintiff in error, Charles Evans, became the purchaser, except as to the portion of the plaintiff in error, Nathan C. Morse, Jr., who was not a party to said suit, but an heir of said N. C. Morse, Sr.,

deceased. In 1874, N. C. Morse, Sr., built a house on said land and placed a tenant in actual possession thereof.

Separate answers were filed by the defendants.

The defendant in error, John Jay Anderson, claimed twenty-eight hundred and twenty (2,820) acres of said John Carnan—ten thousand-acre boundary—and based his right thereto on a deed from John T. Magowan and others, heirs and devisees of James P. Magowan, and also pleaded the statute of limitation in bar of said action.

Under the charge of the Court, which was adverse to the rights of the plaintiffs in error, the jury found a verdict for all of the defendants. The plaintiffs in error moved for a new trial on various grounds, found at pages 18, 19 and 20 of the record, and thereafter the court granted them a new trial as to all the defendants except the defendant in error, John Jay Anderson, in whose favor judgment was rendered upon the verdict. From that judgment the plaintiffs in error prosecuted the present writ of error.

ERRORS ASSIGNED.

(PAGE 2 RECORD.)

First: The Court erred in sustaining the motion of defendants to exclude the certified copy of the deed from Daniel Breck to N. C. Morse, marked "A," dated July 17, 1838, and in deciding as a matter of fact that none of the land in contest (the John Carnan 10,000-acre tract) lay in Estill County in the year 1838.

Second: The Court erred in excluding the evidence as to the contents of the will of C. W. Clayton.

Third: The Court erred in charging the jury as follows: (See page 89 Record for said charge to the jury.)

Fourth: The Court erred in instructing the jury that under the evidence in this case it was necessary for the plaintiffs to show title from the Commonwealth in order to recover.

Fifth: The Court erred in failing to instruct the jury that the defendants were estopped to deny Duckham's title to the land in controversy previously to his sale to Breck in 1838.

Sixth: The Court erred in failing to instruct the jury that it was not necessary for plaintiffs to show title in Thomas Duckham to the land in controversy, plaintiff and defendant both claiming under Thomas Duckham.

Seventh: The Court erred in failing to instruct the jury as to what constituted continuous, adverse and peaceable possession under the law of Kentucky.

Eighth: The Court erred in failing to instruct the jury that if they found from the evidence that plaintiffs and defendants both claimed under a common source that it was not in that event necessary for plaintiffs to trace their title back of that source.

THE CHARGE OF THE COURT TO THE JURY.

(PAGE 89 RECORD.)

"The Court charged the jury that as the defendants denied plaintiffs' title as well as pleaded affirmatively an adverse possession in themselves and in those under whom they claim, the plaintiffs must show a good title in themselves to recover the land in controversy. This title should be shown either by proving a good paper title from the Commonwealth down to or in themselves, or by the proof of an adverse and continuous possession by themselves, or by those under whom they claim for fifteen years before the bringing of the suit; that the deed from John McCalla to Thomas Duckham, dated August 23, 1839, which purported to be based upon a sale of John Carnan ten thousand-acre tract of land for taxes, did not of itself prove the necessary steps to make a valid assessment and levy of the taxes for which it was alleged the land was sold, and as there was no other evidence of the assessment and levy of the taxes and the sale of the land for said taxes than the recital of the deed itself, the title of John Carnan did not pass to Thomas Duckham by said deed, and therefore plaintiffs' paper title had failed."

ARGUMENT.

1. On the 4th day of January, A. D. 1786, the Commonwealth of Virginia issued a patent to John Carnan for the ten thousand-acre tract of land involved in this controversy. On the 23d day of August, 1839, John M. McCalla, Collector of Internal Revenue and District Tax, made a deed to Thomas Duckham for said land, reciting that in pursuance of the Acts of Congress of July 22d, 1813, and 9th of January, 1815, said land was assessed for taxes due the United States and in 1816 were sold by John H. Morton, Collector, to the highest bidder, when and where Thomas Duckham became the purchaser of the said ten thousand-acre tract of land which is described in said deed as in the patent from the Commonwealth of Virginia to John Carnan. The recitations in said deed from McCalla to Duckham were official statements of said McCalla as Collector of Internal Revenue and District Tax, and said deed contains the official statements of the Assessor and District Clerk over their official signatures, and is sufficient to show that all the necessary steps were taken under said tax sale to pass the title. Duckham's tax title was thus recognized. Thereafter the ancestor of the vendor of the defendant in error bought said land from said Duckham and accepted his deed therefor in 1841. (Page 79 Record.) These recorded acts are conclusive against the defendant in error and estop him to deny that Duckham once had title.

2. We maintain that the plaintiffs in error were not bound, in order to recover, to show paper title further back than to said Thomas Duckham who was the common grantor of the plaintiffs in error, and those under whom they claim and of the said defendant in error, John Jay Anderson, and those under whom he claims. The Circuit Court granted a new trial to the plaintiffs in error against all the defendants except the present defendant in error, and thereby admitted the doctrine that parties claiming from a common grantor are estopped to dispute his title in a controversy between themselves, and, therefore, in such case it is unnecessary to connect the paper title further

back than to such common grantor. For this rule see 2d Greenleaf's Evidence, Sec. 307.

(See Berry vs. Stewart, 22 Ala., 207; Hightower vs. Williams, 38 Ga., 597; Wortham vs. Cherry, 3d Head, 468; Sexton vs. Rhams, 13 Wis., 99; Coan vs. Joyce, 3 Bush, 455; Alsop vs. Ware, Ky. Law Rep., p. 366; Mining Co. vs. Taylor, 100th U. S. Rep., p. 40.)

3. This doctrine can not be successfully disputed, but it is claimed that because the deed from Duckham to James P. Magowan of the 9th day of September, 1841, recites that the parties thereto had conflicting claims and that Magowan claimed the land on each side of Red River to "the cliffs and hills," the doctrine of this rule as to a common grantor does not apply. The deed itself shows that Magowan's claim was restricted to the narrow bottoms on Red River and did not extend to the table lands on top of the cliffs and hills and running back into the John Carnan ten thousand-acre boundary. The present controversy is principally as to lands above the cliffs and hills and not touching the river or branches. The deed from Duckham to Magowan is a general warranty deed to the lands in controversy, and whatever may have been the motive of Magowan in procuring it he obtained title under said deed and *had no other paper title whatever to the land in controversy.* It is clear from the deed that James P. Magowan purchased from Thomas Duckham in 1841 all the lands embraced by the John Carnan patent, except the narrow strips or bottoms to the cliffs and hills of Red River, and that James P. Magowan did not claim any other part of said land at that time except *the bottoms* which are very narrow and do not constitute two hundred acres of land. The defendant in error having derived title from said James P. Magowan, who derived title from said Duckham, is estopped to require the plaintiffs in error to show paper title from Government down to said Thomas Duckham. (See authorities cited.)

The deed from Thomas Duckham to Daniel Breck in 1838 embraced the same lands which said Duckham undertook to convey to said James P. Magowan in 1841.

A careful examination of the deed from Duckham to James P. Magowan will demonstrate that he was a purchaser from Duckham and that the conflict of title between them was only as to the narrow strips of bottom lands on each side of the Red River as far as the cliffs and hills and branches running into it. (Page 79 Record.) The further consideration of fifty dollars ($50.00), with a reservation to Duckham of all the mineral in said lands, was paid to him by Magowan who received from him an absolute warranty deed against all superior claims. How can the heirs and devisees of James P. Magowan and their vendees deny the title thus received from Duckham and require the plaintiffs in error to show title back to the Commonwealth of Virginia? No exception to the rule can be based upon the facts and reservations embraced by the deed of 1841 from Duckham to James P. Magowan, and there is no authority to support such an exception.

The Court, therefore, erred in charging the jury that the plaintiffs in error must show paper title back to the Commonwealth.

4. It also erred in not defining to the jury what sort of possession and claim is necessary to constitute title by possession, as the defendant in error relied upon title based on possession or limitation.

The Court did not explain to the jury that the possession must have been actual or that possession to be available under a junior deed must be by actual residence on the land. (Dorch vs. Thompson, 12 B. M., 383.)

There must have been some one upon the land claiming the whole thereof so that suit might have been brought against him, else the possession was insufficient to constitute title in the defendant in error.

It is also well settled in Kentucky that possession under a junior patent or deed is limited to the actual close. (Shreve vs. Summers, 1 Dana, 239; 4 Bibb, 101. Morse vs. Curry, 1 Dana, 267; 2 Marshall, 448. Jones vs. Macauley, 2 Duv., 14.)

It was, therefore, error to charge the jury that proof of an

adverse and continuous possession would constitute title by possession, because the sort of possession actual or constructive was not defined, nor was the law as to conflicting claims to possession given. It was error to charge the jury,

First: That the deed from McCalla to Duckham did not legally show the necessary steps to make a valid assessment and levy of the taxes.

Second: That the plaintiffs' paper title had failed.

The latter charge was based upon the erroneous view that the plaintiffs in error were required to prove paper title back of Thomas Duckham, the common grantor of both plaintiffs and defendants. (See authorities on page 5 of this brief.)

5. It appears on page 31 of the Record that the defendants objected to the reading of a certified copy of the deed dated July 17, 1838, from Thomas Duckham to Daniel Breck and that the Court heard the evidence whether the land in controversy lay in Estill county in 1838 or since that time, and decided, as matter of fact, that the land did not lie in Estill county and excluded the deed which was necessary to support plaintiffs' title to the land.

It is earnestly contended for plaintiffs in error that the Court had no right or power to decide *the fact* whether the land in controversy lay in Estill county in 1838 or not, that being a question for the jury under proper instruction. The Court should have charged the jury that if they believed from the evidence the land, or any part of it, lay in Estill county in 1838, then they should consider the deed from Duckham to Breck as a proven link in plaintiffs' chain of title.

In the case of Hodges vs. Easton, 106 U. S., p. 408, we think it is held that such a fact was proper for the jury. The Court said in that case, "The jury determined a part of the facts, while other facts upon which the final judgment was rested were found by the Court to have been conceded or not disputed. * * * * The Court could not submit part of the facts to the jury and itself determine the remainder," because it would

be unconstitutional to do so. (See Barnes vs. Williams, 11 Wheat., 415; Patterson vs. U. S., 2 Wheat., 221.)

Finding where the land was located did not involve a question of law, but of fact, pure and simple; no legal construction of the deed was involved. According to the case cited and that of Snoddy vs. Foster, 1 Met., 163, and Keith vs. Hinkston, 9 Bush, 284, the jury are the sole judges of questions of fact. Had there been no evidence or controversy as to the county in which the land lay in 1838, then the Court might have decided the questions as to the legality of the record of the deed; but, the evidence being in conflict, the jury should have been allowed to find whether the land, or any part of it, lay in Estill county at the time the deed was recorded. This action of the Court seems to be manifestly erroneous.

Suppose the only question had been as to whether the land, or some of it, lay in Estill county in 1838, it being admitted if it did the title of the plaintiffs in error was perfect, could the Court have heard the evidence and determined the facts as to the location of said land? If trial of facts by jury is to be preserved, the Court could not.

Evidence as to where a county line runs, a stream flows, trees flourish or hills and boundaries rest, is uniformly heard by the jury when the fact which such evidence is introduced to prove is necessary to a recovery in ejectment. (Section 496, Sedgwick & Wait, on Trial of Title to Land.)

In nearly every ejectment trial in Kentucky the first point which the plaintiff undertakes to prove and is required to prove is the location of the land in question, whether to establish a lap, a conflict of possession, or a compliance with the registration laws in the proper county, or to maintain title by adverse possession. Where a tract of land lies partly in one county and partly in another, the deed to it may be recorded in either. (Conn vs. Manifee, 2 Marsh., 397.)

6. The will of C. W. Clayton having been probated in Chicago and its destruction by the great fire proven, evidence of its contents was clearly competent. By said will a small interest

in the title to said land passed to the devisees thereunder, and thereafter became the property of plaintiffs in error, therefore the contents of said will were material and relevant evidence.

7. The bill of exceptions is legally and justly a part of the record.

On December 17, 1887, the verdict was rendered and ten days' time allowed to present bill of exceptions.

On the 24th day of December, 1887, the bill of exceptions was tendered and noted of record and time allowed until the 20th of January, 1888, to complete the bill.

The judge declined to sign the tendered bill and on the 14th of January, 1888, extended the time to prepare another bill until the 15th of March, 1888. Before the 15th of March, 1888, another bill of exceptions was presented to the judge who seemed to think it did not conform to his suggestions.

Another order was entered extending the time to May 15, 1888, to complete the bill of exceptions. Before that time expired a third bill of exceptions was tendered to the Court, the motion for new trial being disposed of at the same term.

Other orders were made extending the time within which to present a bill of exceptions to the 2d day of July, 1888.

In December, 1888, counsel for plaintiffs in error made various efforts to have the counsel of the defendant in error present, but, owing to sickness, it was impracticable to do so until the bill of exceptions now before the Court was signed on April 1, 1889.

The certificate of the judge shows all these facts, and that the counsel for plaintiffs in error continued to present bills of exception to the court and judge until the bill was signed by him and made a part of the record.

The orders of extension and facts contained in the bill of exceptions show in this case that justice would be defeated if the bill were to be excluded from the record.

Counsel for plaintiffs in error were assiduous and persistent in presenting and insisting upon the bill of exceptions until the Court signed and made it a part of the record.

The State practice of Kentucky requires the presentation of a bill of exceptions within the time allowed to do so by the Court; but such is not the practice in Federal courts.

In the case of United States vs. Breitling, page 253, 20th How , this Court held that, notwithstanding State practice of Alabama to the contrary, where the judge holding the Federal Court in the State of Alabama signed a bill of exceptions under special circumstances after adjournment and without the consent of counsel, the Supreme Court will consider the exceptions properly before it. The Court said: "And it is always in the power of the court to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it. The attention of this Court has, upon several occasions, been called to this subject, and the rule established by its decisions will be found to be this: The exception must show that it was taken and reserved by the party at the trial, but it may be drawn out in form and sealed by the judge afterwards. This point was directly decided in the case of Phelps vs. Mayor, 15 How., 260, and again in Turner vs. Yates, 16 How., 68. And the time within which it may be drawn out and presented to the Court must depend on its rules and practice and on its own judicial discretion. In the case before us, the judge, who tried the case, deemed it his duty to seal and certify the exceptions to this court; and under the circumstances stated in the exception and the note, we think he was right in doing so."

In the case last cited the Court adjourned without extending the time to file bill of exceptions, yet several months thereafter the judge, having heard nothing of the bill in the meantime, signed it over the objection of counsel, and his act was approved as within his discretion.

In the present case, the delay in presenting the bill to the judge was occasioned by his desire to correct it in some matters which, when done, he deemed it his duty to seal and certify it to this Court, and, under the circumstances stated by the judge, who certified the exceptions which were made and taken at the trial as shown by the bill, it is earnestly insisted

that he was right in doing so, and that the purposes of justice in this case required it to be done.

In the case of Stanton, &c., vs. Embrey, 93 U. S., 554, the the verdict was rendered March 13, 1873, but the bill of exceptions was not filed until August 13, 1874, yet it was held to be legally part of the record.

The Court of Appeals of Kentucky in Halloway vs. Halloway, 1st Mon., p. 132, said: "As the bill of exceptions was signed and enrolled by the Court, we must suppose that it was made out and presented under the permission of the Court, and, of course, we must presume that in giving permission the discretion of the Court was correctly exercised."

This reasoning is applicable to the action of the judge of the Circuit Court before whom the present case was tried.

In Hughes vs. Robertson, 1 Mon., p. 216, the Court of Appeals of Kentucky said: "But when the exception is afterwards sealed and allowed, and appears of record without any further statement, we are bound to believe that the exception was taken at the proper moment, and the filing and enrolling of it postponed until then, to suit the convenience of all concerned; and when so done it must be as valid as if entered between the swearing and verdict of the jury."

It seems that the foregoing authorities conclusively establish the present bill of exceptions as legally and justly a part of the record.

The plaintiffs in error earnestly and respectfully pray the Court to reverse the judgment of the Circuit Court.

THOMAS F. HARGIS,
Of Counsel for Plaintiff in Error.